

# HOUSE JOURNAL

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EIGHTIETH LEGISLATURE, REGULAR SESSION

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## PROCEEDINGS

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EIGHTY-FIFTH DAY — SATURDAY, MAY 26, 2007

The house met at 11 a.m. and was called to order by the speaker.

The roll of the house was called and a quorum was announced present (Record 1881).

Present — Mr. Speaker; Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

Absent — Harless.

The invocation was offered by Paul Ferguson, Jr., pastor, St. Andrew Lutheran Church, Houston, as follows:

Eternal and ever living God, in whom we have our faith, our hope, and our trust, we thank you for our freedom and liberty. With joyful hearts, we give you thanks for those noble and courageous individuals who have served or are serving in our armed forces, either at home or over seas. For all the men and women of the armed forces, grant them your protection; preserve them from harm; and make them courageous, vigilant, and faithful in the performance of their duties. May their examples of heroism, sacrifice, and perseverance continue to be an inspiration to us all. Also, on this Memorial Day weekend, keep us ever mindful of those families who have lost loved ones who have served in our military.

Heavenly Father, now we pray that you would bless those who hold elected office in the great State of Texas. Especially we pray for those serving in the 80th Legislative Session, may they do their work in a spirit of wisdom, kindness, and justice in these last few hours of the regular session. We ask all of this, in the name of your son, Jesus Christ, our Lord. Amen.

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

### **STATEMENT BY THE SPEAKER**

The speaker submitted the following statement for inclusion in the journal:

May 26, 2007

The office of Speaker of the Texas House of Representatives is the only constitutionally-mandated officer of the House by virtue of Article 3, Section 9 of the Texas Constitution. All other officers of the House, including committee chairs, are chosen by rule. The Speaker occupies a unique position in this state as an officeholder in his capacity as a state representative from a particular district of this state and also as the constitutional officeholder of the position of Speaker of the Texas House of Representatives.

The Texas Constitution speaks to the exclusive grounds for the removal of officeholders. Article 16, Section 5 is applicable to all officeholders and is automatic upon conviction for bribery. Article 3, Section 11 is specific to the legislature, and authorizes each house of the legislature to expel members for offenses upon a two-thirds vote. Article 3, Section 8 vests procedural authority upon each house to judge election contests and qualifications to hold office as a state legislator.

Furthermore, a unique provision of the Texas Constitution, Article 15, Section 7, mandates that the legislature can only provide for the trial and removal from office of any officer of this State by enactment of a law if a mode for a state officer's removal has not otherwise been specifically provided for in the Texas Constitution.

This unambiguous provision of the Texas Constitution overrides any supposed merit to the suggestion that a process to remove an officer of this state can be created by one house of the legislature during a legislative session and used to remove that officer from office. Because Article 15, Section 7 specifically forbids the result that Representatives Smith, Hill, and Dunnam seek to accomplish by motion, their reliance on precedent from sources outside of the rules of this House, the Texas Constitution and the laws of this state is misplaced and violates the specific substantive provisions and procedural guarantees of the Texas Constitution.

Additionally, and independent of the foregoing, the House rules do not have a provision for members to remove a Speaker during mid-session for the reason that Article 3, Section 9 of the Texas Constitution governs the timing and authority for the election of the Speaker. A motion to amend the rules to provide for electing a Speaker by a new and different method from that set out in the Texas Constitution is, in essence, an attempt to amend the Texas Constitution by

the passage of a motion in one house. Amendments to the Texas Constitution can only come about by the passage by two-thirds vote in both houses of the proposed amendment which must then receive voter approval in an election called for that purpose.

Given that the motion being proposed is not authorized by law, and furthermore conflicts with applicable provisions of the Texas Constitution, the effect of passage of such a motion would be invalid. As a matter of public policy, for a Speaker to recognize a member for such a motion would not only be disruptive of the legitimate business on behalf of the citizens of this state that the House should instead be conducting, but it also would undermine the institution of the office of the Speaker of the Texas House of Representatives.

Therefore, pursuant to my authority under Rule 5, Section 24 of the House rules, I denied the requests to be recognized for the motion.

**HR 2028 - READ  
(by Hilderbran)**

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

**HR 2028**, In memory of Kenneth Brice Shackelford of Real County.

**SB 11 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Corte, the house granted the request of the senate for the appointment of a conference committee on **SB 11**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 11**: Corte, chair; Escobar, Herrero, Burnam, and Isett.

**SB 9 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE INSTRUCTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Madden, the house granted the request of the senate for the appointment of a conference committee on **SB 9**.

Representative Geren moved to instruct the conference committee on **SB 9** to retain the substance of the Geren amendment regarding private contractors in the text of the conference committee report on **SB 9**.

The motion to instruct conferees prevailed.

**SB 9 - REMARKS**

REPRESENTATIVE GEREN: Thank you, Mr. Speaker and members, the senate stripped out an amendment that I put on **SB 9** that was acceptable to the author. And **SB 9** mandates now that the school districts use the DPS and FBI databases to screen these teachers. The DPS database is widely known to miss more than 30 percent of Texas conviction records, and the FBI fingerprint check contains only arrest records without any disposition information on 50 percent of the fingerprints in the file. Many of our school districts currently use private contractors so they can do the background checks on their employees, and it's

between a third and half the cost of what it costs to use DPS and FBI. In the U.S. Attorney General's 2006 Report on Criminal Background Checks—this is the U.S. Attorney General—found that the FBI fingerprint check mandated by **SB 9** misses 50 percent. The DPS testified in committee that its own data center misses one-third to one-half of all statewide criminal conviction records so, members, I would like to propose that we instruct the conferees to leave the Geren amendment in, which allows the school districts to contract with private contractors, as well as give them the option, give your local school board the option, whether or not to use the private contractor, which is less expensive and more accurate, or they can use the DPS and FBI. That was what I would like for this house to do is instruct the conferees that that's what we would like in this bill.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 9**: Branch, chair; Madden, Eissler, Morrison, and McReynolds.

#### **REMARKS ORDERED PRINTED**

Representative Goolsby moved to print remarks by Representative Geren.

The motion prevailed.

#### **SB 406 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Hartnett, the house granted the request of the senate for the appointment of a conference committee on **SB 406**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 406**: Hartnett, chair; Hughes, Gonzales, Hopson, and Goolsby.

#### **HR 2859 - NOTICE OF INTRODUCTION**

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the speaker announced the introduction of **HR 2859**, suspending the limitations on the conferees for **SB 993**.

#### **HR 2801 - NOTICE OF INTRODUCTION**

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the speaker announced the introduction of **HR 2801**, suspending the limitations on the conferees for **HB 2458**.

#### **HR 2851 - NOTICE OF INTRODUCTION**

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the speaker announced the introduction of **HR 2851**, suspending the limitations on the conferees for **HB 1090**.

#### **HR 2854 - NOTICE OF INTRODUCTION**

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the speaker announced the introduction of **HR 2854**, suspending the limitations on the conferees for **SB 482**.

**HR 2793 - NOTICE OF INTRODUCTION**

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the speaker announced the introduction of **HR 2793**, suspending the limitations on the conferees for **SB 593**.

**PARLIAMENTARY INQUIRY**

REPRESENTATIVE GEREN: First of all, Mr. Merritt is going to hand you all of the documents that I'm going to refer to, so there will be no need to adjourn or stand at ease so we can go find them. Mr. Speaker, can you advise the body what **HR 2** dealt with? Was it the housekeeping resolution? You have that in your hand.

SPEAKER: Just a moment.

GEREN: It looks like this. Mr. Wilson has it in his hand now, but it looks like this.

SPEAKER: I understand, Mr. Geren, we'll look at it, and it's fine.

GEREN: Was it the housekeeping resolution, sir?

SPEAKER: Mr. Geren, we'll take a look at it and come back to you in a minute. We're trying to move through the calendar.

GEREN: Well, sir, I have several more questions, parliamentary inquiries to make.

SPEAKER: Okay.

GEREN: Would you agree that Section 3.04 of **HR 2** states that the Committee on House Administration shall prepare and distribute to all members within 60 days after the convening of the regular session policy statements to include, but not be limited to, policies pertaining to members as a class, and would you agree that section heading for Section 3.04 says House Policy Manual?

SPEAKER: Mr. Geren, I'll take your word for it.

GEREN: Thank you, sir. Do you recall that on January 12th, when you laid out **HR 2** for consideration, we deliberated that resolution, and ultimately voted on it, record vote number 17, and that the will of the house was to pass a resolution, 141 yeas, 4 nays, 1 present, not voting?

SPEAKER: I'll take your word on that, Mr. Geren.

GEREN: Thank you, Mr. Speaker. In the personnel manual, it's described in **HR 2**, are you familiar with the conditions of employment, the subsection under payroll/personnel section in the manuals? Specifically, do you remember the fact that the manual states that "employees of the house, who are not employees of a committee or an individual member shall," Mr. Speaker, and then the manual lists 11 provisions that these employees shall be subject to? Mr. Speaker, I would direct your attention to the 10th provision of this subsection. The House Committee on Administration has ruled in number 10 that, "this type of employee shall not be permitted to receive directly or indirectly any compensation, by gift or otherwise, from any other source unless specifically authorized by the

Committee on House Administration." And I've furnished you copies of the pages out of the manual. Would you agree with that, sir?

SPEAKER: I'll take your word on that, Mr. Geren.

GEREN: Mr. Speaker, are Mr. Keel and Mr. Wilson employees of the house?

SPEAKER: Mr. Geren, the house resolution gives the speaker the authority to designate temporary replacements for its officers in their absence or an event of vacancy.

GEREN: I understand that, sir. Are they employees of the house, sir?

SPEAKER: They are temporary officers who have been appointed.

GEREN: When was the last time House Administration met, sir? I've furnished you with a committee posting; I believe it's dated May the 3rd.

SPEAKER: We're not advised.

GEREN: Well, I furnished you with that committee posting from the last time they met. Mr. Speaker, would you mind looking at that? I was happy to furnish it to you.

SPEAKER: Mr. Geren, the House Administration does not have to meet in order for us to fill a temporary vacancy.

GEREN: When did you employ Mr. Keel and Mr. Wilson, Mr. Speaker?

SPEAKER: They were appointed last night.

GEREN: Mr. Speaker, I have documentation that I've also furnished you, that Mr. Keel's, from Mr. Keel's law firm, and I believe one from Mr. Wilson's, that they're receiving compensation from other sources, and that this rule specifically—the employment manual specifically states that they cannot receive compensation from any other source without the approval of the Committee on House Administration.

SPEAKER: Mr. Geren, if you have a complaint, you need to file it with the Ethics Commission.

GEREN: Mr. Speaker, this is directly about employees of the house that I believe have not been cleared, and if they are receiving compensation from some other source, sir, without the approval of the Committee on House Administration, then they are not legally, they cannot legally be employed by you, or any other member of this house. This is not about ethics. This is our rules and our employment manual, Mr. Speaker.

SPEAKER: Mr. Geren, you are incorrect. They have been legally appointed, they've been administered the proper oath, and you are wrong on your legal analysis.

GEREN: Does this, as a personnel manual that has been approved by the Committee on House Administration, not apply to all employees of the house?

SPEAKER: Article IX(c) of the Texas Constitution, Article III, Section 9(c), has the house choose its own officers, and the housekeeping resolution, the Texas House is delegated to the speaker to determine its own officers. Under the resolution, the speaker has the sole authority to appoint and discharge house officers. The manual you are referring to does not apply to this situation.

GEREN: Why do we have the manual, then, if it does not apply to employees? All these gentlemen, or House Administration, could meet and approve their other compensation. That's all that would be required, and I personally believe they shouldn't be serving until that happens, sir. Thank you.

#### **REMARKS ORDERED PRINTED**

Representative Geren moved to print remarks between Speaker Craddick and Representative Geren.

The motion prevailed.

#### **SB 530 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Eissler, the house granted the request of the senate for the appointment of a conference committee on **SB 530**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 530**: Eissler, chair; Hochberg, Zedler, Patrick, and Delisi.

#### **SB 228 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Eiland, the house granted the request of the senate for the appointment of a conference committee on **SB 228**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 228**: Eiland, chair; Dutton, Gonzalez Toureilles, Strama, and Bonnen.

#### **SB 101 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Morrison, the house granted the request of the senate for the appointment of a conference committee on **SB 101**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 101**: Morrison, chair; Woolley, Branch, D. Howard, and Villarreal.

#### **SB 718 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Gattis, the house granted the request of the senate for the appointment of a conference committee on **SB 718**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 718**: Gattis, chair; Hopson, R. Cook, Kolkhorst, and Van Arsdale.

(Speaker pro tempore in the chair)

**SB 765 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Frost, the house granted the request of the senate for the appointment of a conference committee on **SB 765**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 765**: Frost, chair; Kolkhorst, Otto, Heflin, and R. Cook.

**SB 909 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Madden, the house granted the request of the senate for the appointment of a conference committee on **SB 909**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 909**: Madden, chair; Oliveira, McReynolds, Jones, and Hochberg.

**SB 758 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Rose, the house granted the request of the senate for the appointment of a conference committee on **SB 758**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 758**: Rose, chair; J. Davis, S. King, Naishtat, and Parker.

**HR 1986 - READ**

**(by Dukes, Naishtat, Rodriguez, Strama, and D. Howard)**

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

**HR 1986**, In memory of Clifford Jamal Antone of Austin.

**HR 1986 - MOTION TO ADD NAMES**

On motion of Representative Rodriguez, the names of all the members of the house were added to **HR 1986** as signers thereof. (The following members requested that their names be removed: Dunnam, Elkins, England, Farias, Garcia, Gattis, Geren, Goolsby, C. Howard, Kuempel, McCall, McReynolds, Pierson, Raymond, T. Smith, W. Smith, Talton, Riddle, and Woolley.)

**HR 2025 - READ**

**(by Bolton)**

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

**HR 2025**, Congratulating Giang Hoang of Paredes Middle School in Austin on her receipt of a 2007 READ 180 All-Star Award.

**HR 2025 - MOTION TO ADD NAMES**

On motion of Representative Vo, the names of all the members of the house were added to **HR 2025** as signers thereof.

**HCR 265 - READ**

**(by Dukes)**

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

**HCR 265**, Honoring Major James R. Stegall (Ret.) of Austin for his service to his country and recommending that he be inducted into the Texas Aviation Hall of Fame.

**HCR 265 - MOTION TO ADD NAMES**

On motion of Representative Noriega, the names of all the members of the house were added to **HCR 265** as signers thereof.

**HR 2861 - ADOPTED**

**(by Dunnam)**

Representative Phillips moved to suspend all necessary rules to take up and consider at this time **HR 2861**.

The motion prevailed.

The following resolution was laid before the house:

**HR 2861**, In memory of Dr. Herbert H. Reynolds of Waco.

**HR 2861** was read and was unanimously adopted by a rising vote.

On motion of Representative Anderson, the names of all the members of the house were added to **HR 2861** as signers thereof.

**SB 964 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Hill, the house granted the request of the senate for the appointment of a conference committee on **SB 964**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 964**: Hill, chair; Y. Davis, Hartnett, Krusee, and Alonzo.

**SB 965 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Hill, the house granted the request of the senate for the appointment of a conference committee on **SB 965**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 965**: Hill, chair; Y. Davis, Hartnett, Krusee, and Alonzo.

**SB 1058 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Noriega, the house granted the request of the senate for the appointment of a conference committee on **SB 1058**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1058**: Noriega, chair; Escobar, Garcia, Corte, and Herrero.

**SB 1266 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Krusee, the house granted the request of the senate for the appointment of a conference committee on **SB 1266**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1266**: Krusee, chair; Pickett, Haggerty, Hill, and Phillips.

**SB 1119 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Murphy, the house granted the request of the senate for the appointment of a conference committee on **SB 1119**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1119**: Murphy, chair; Bailey, Delisi, Elkins, and Hill.

**SB 1436 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Creighton, the house granted the request of the senate for the appointment of a conference committee on **SB 1436**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1436**: Creighton, chair; Pickett, O'Day, Gattis, and Guillen.

**SB 1731 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Isett, the house granted the request of the senate for the appointment of a conference committee on **SB 1731**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1731**: Isett, chair; Gattis, Taylor, Rose, and Delisi.

**SB 1871 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Hochberg, the house granted the request of the senate for the appointment of a conference committee on **SB 1871**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1871**: Hochberg, chair; Kolkhorst, Eissler, Mowery, and Olivo.

**SB 1879 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Hamilton, the house granted the request of the senate for the appointment of a conference committee on **SB 1879**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1879**: Hamilton, chair; Creighton, Delisi, Frost, and Hopson.

**SB 1908 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Menendez, the house granted the request of the senate for the appointment of a conference committee on **SB 1908**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1908**: Menendez, chair; Bailey, Chisum, Swinford, and Thompson.

**SB 1951 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Hartnett, the house granted the request of the senate for the appointment of a conference committee on **SB 1951**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1951**: Kolkhorst, chair; Hughes, Goolsby, Hopson, and Gonzales. (New conferees were appointed later today, on the part of the house, on **SB 1951**.)

**SB 2003 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Phillips, the house granted the request of the senate for the appointment of a conference committee on **SB 2003**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 2003**: Phillips, chair; Parker, Puente, Gonzalez Toureilles, and T. King.

**SB 3 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Puente, the house granted the request of the senate for the appointment of a conference committee on **SB 3**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 3**: Puente, chair; Laubenberg, Hartnett, Hamilton, and Callegari.

**HB 1610 - HOUSE DISCHARGES CONFEREES  
HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

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

**HB 1610**, A bill to be entitled An Act relating to the requirement that a judge release on community supervision certain defendants convicted of certain state jail felonies.

Representative Madden moved to discharge the conferees and concur in the senate amendments to **HB 1610**.

A record vote was requested.

The motion to discharge conferees and concur in senate amendments prevailed by (Record 1882): 139 Yeas, 1 Nays, 2 Present, not voting.

Yeas — Alonzo; Anchia; Anderson; Aycock; Bailey; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, D.; Hughes; Isett; Jackson; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

Nays — Phillips.

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

Absent — Allen; Bolton; Cook, B.; Dutton; Hardcastle; Harless; Howard, C.; Jones.

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

Amend **HB 1610** (senate committee printing) as follows:

(1) In SECTION 1 of the bill, in amended Section 15(a)(1), Article 42.12, Code of Criminal Procedure (page 1, line 17), strike "or 12.44(a)".

(2) In SECTION 1 of the bill, in amended Section 15(a)(1), Article 42.12, Code of Criminal Procedure (page 1, line 21), between "Penal Code," and "in which event", insert "or unless the conviction resulted from an adjudication of the guilt of a defendant previously placed on deferred adjudication community supervision for the offense.".

**SB 1332 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Chavez, the house granted the request of the senate for the appointment of a conference committee on **SB 1332**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1332**: Chavez, chair; Branch, Deshotel, Dutton, and Frost.

**SB 960 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Haggerty, the house granted the request of the senate for the appointment of a conference committee on **SB 960**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 960**: Haggerty, chair; Quintanilla, Pickett, Chavez, and Talton.

**LEAVE OF ABSENCE GRANTED**

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

Harless on motion of Darby.

**SB 792 - ADOPTION OF CONFERENCE COMMITTEE REPORT**

Representative W. Smith submitted the conference committee report on **SB 792**.

**SB 792 - STATEMENT OF LEGISLATIVE INTENT**

REPRESENTATIVE LEIBOWITZ: Mr. Chairman, as **SB 792** left the house, certain managed-lane projects were exempted from the moratorium, but Representative Farias added an amendment to ensure that the CDA toll project for Highway 281 and Loop 1604 in Bexar County were included in the moratorium. Is that correct, sir?

REPRESENTATIVE W. SMITH: That's correct.

LEIBOWITZ: And it's my understanding that in the conference committee report for **SB 792**, the moratorium only extends to Highway 281, but not Loop 1604. Is that correct?

W. SMITH: Yes, that's correct.

LEIBOWITZ: The CDA for Highway 281 also includes Loop 1604. Does the moratorium put Highway 281/Loop 1604 project on hold, or just the Highway 281 portion of the project?

W. SMITH: It is my intent that since Highway 281 and Loop 1604 were developed together as a joint project, the entire 281/1604 conference development agreement would be subject to the moratorium, and if Loop 1604 wanted to be developed as a toll road, a new request for codification would be needed to be started on Loop 1604 as a stand-alone project.

### REMARKS ORDERED PRINTED

Representative Leibowitz moved to print remarks between Representative W. Smith and Representative Leibowitz.

The motion prevailed.

REPRESENTATIVE KOLKHORST: Thank you, Wayne. I know you and I have been attached at the hip for several weeks now on this particular subject. Now I want to ask you a couple questions. There's been a lot of talk about Amendment No. 13 and the facilities agreement language that I added on the house floor. I want to talk specifically on that to give some assurances that we do have a moratorium that is intact. To your knowledge, facilities agreements is not referenced anywhere in the code, it's always comprehensive development agreements when we refer to contracts with private equity. Is that correct?

W. SMITH: That's correct.

KOLKHORST: Okay. For the official record, Mr. Smith, and our proceedings today, I want to confirm a matter with you. As you know, both of us were members of the conference committee for **SB 792**, and in that connection we met with the senate conferees, as well as representatives of the governor's office. In our discussions with the senators, and Misters Armbrister and Heckman, we discussed facilities agreements, which are subsidiary agreements under comprehensive development agreements, and in particular whether **SB 792** should contain a moratorium on facilities agreements, as well as on CDAs through the end of August 31, 2009.

In the end, **SB 792** does not provide for an express moratorium on facility agreements. However, it is my understanding, Mr. Smith, and I want to confirm that it is your understanding as well for this body, the governor's representatives advised you, me, and other conferees that under **SB 792**, no segment of TTC-35, except for Loop 9, would be constructed during the moratorium. That is, through August 31, 2009. Further, those representatives told us that they expected that during such a period, or through August 31, 2009, no facilities agreements would be entered into with respect to TTC-35.

They advised us that the reason was that the environmental impact statements that would be required for facilities agreements, I'm sorry, before a facilities agreement could be entered into would not be reasonably completed by August 31, 2009. Therefore, the governor's representatives advised us that a moratorium on facilities agreements, under the CDA for TTC-35, would not be needed in **SB 792**. Mr. Smith, for the official record of the house, was your understanding of our conversation with the governor's representatives on this subject the same as mine?

W. SMITH: Yes, they were.

**REMARKS ORDERED PRINTED**

Representative Kolkhorst moved to print remarks between Representative W. Smith and Representative Kolkhorst.

The motion prevailed.

REPRESENTATIVE Y. DAVIS: Thank you, Chairman Smith. I just want to make sure for information purposes, we had a moratorium on some projects in North Texas. Is that still in the bill? We had a moratorium on the North Texas projects that we had exempted out, is that exemption still in the bill?

W. SMITH: That's still in the bill, yes.

Y. DAVIS: So Loop 9 is still in the bill to be built as it was previously scheduled, is that correct?

W. SMITH: That's correct.

Y. DAVIS: Is it your belief that they didn't take any other projects out? Is 161 still taken out, or is it part of the exemption?

W. SMITH: 161 is part of the exemption, but it requires a market evaluation as does one project in Harris County. Those were the things we gave up from **HB 1892**.

Y. DAVIS: Right. And I'd just like to make sure that it is your understanding that **SB 792** in no way would delay projects or is meant or expected to delay any projects that are currently being built or are scheduled to be built in the North Texas region. Is that correct?

W. SMITH: That's my understanding, that's correct.

**REMARKS ORDERED PRINTED**

Representative Y. Davis moved to print remarks between Representative W. Smith and Representative Y. Davis.

The motion prevailed.

REPRESENTATIVE MACIAS: Thank you, Mr. Smith. Representative Smith, is it your understanding that the newly introduced market valuation process is the only way an entity can construct a tolled road in Texas for at least the next four years?

W. SMITH: It is my understanding that yes, that you can't construct without a market valuation. There are two that are specifically indicated in the bill, that you can do a market valuation, and if the participants in the market valuation don't agree, then everything stops.

MACIAS: Okay, thank you. Also, is it your understanding that under the market valuation process, that 1604 or 281 in the Bexar County area could, in fact, be contracted and/or built in the next two years, should the local RMA and TxDOT agree on concessions and bonding funding would be made available, that in the next two years they could in fact be constructed under the market valuation?

W. SMITH: I do not believe that they could construct the road in the next two years almost anywhere, Representative Macias.

MACIAS: I'm sorry, could they enter into the contracting and procedures under market valuation for those road projects?

W. SMITH: I believe they could enter in market valuation negotiations, yes.

MACIAS: Within this time frame?

W. SMITH: Yes.

MACIAS: Over the next two years, can motor fuels and the gas tax be used to contract and or build any sections of the Trans Texas Corridor under this particular senate bill?

W. SMITH: This bill does not address, I guess that's fund six money. It does not address that, but it would be my understanding they could not be.

MACIAS: Okay, and sir, should a route of the Trans Texas Corridor go through a contiguous county of a region ability authority; can that section be constructed using the market valuation process?

W. SMITH: I don't believe it can be in the next two years.

MACIAS: Okay, thank you, sir. Are the construction projects funded with the transportation commission's bonding, under **SB 92**, under the market valuation process, would any of those projects be required to comply with the requirements of the National Environmental Policy Act, or NEPA, prior to the execution of those projects?

W. SMITH: You're asking if federal rules, regulations, and laws must be complied with before the project proceeds, and that is a yes.

### **REMARKS ORDERED PRINTED**

Representative Macias moved to print remarks between Representative W. Smith and Representative Macias.

The motion prevailed.

REPRESENTATIVE BOLTON: Hi, good morning, afternoon. I want to get some clarification. Can you walk me through how **SB 792**, in its current form, deals with the relationship between MPOs and RMAs?

W. SMITH: And RMAs?

BOLTON: RMAs, and the MPOs, the Metropolitan Planning Organizations and—

W. SMITH: Those, there were a number of entities that were carved out, that are exempted from the moratorium, but MPOs are kind of the overseer, but the RMAs in some cases can be the tolling authority, but the MPOs are organizations that overlook the oversight—

BOLTON: In areas such as Central Texas, where I am, we don't have the North Texas Toll Road Authority, and we don't have HCTRA. Is it possible, under **SB 792**, that the RMAs can enter into, begin the process of market valuations without bringing it through MPOs?

W. SMITH: Yes. The RMA can't begin without MPO approval.

BOLTON: The RMA can begin without—

W. SMITH: No, the MPO has to approve the works of the RMA.

BOLTON: Okay, I want to do this for legislative intent, for clarity for folks living here in Central Texas. So the RMA cannot, that's a negative cannot, begin the market valuation process without bringing it to the elected officials on our MPO campus?

W. SMITH: Yes, correct.

### REMARKS ORDERED PRINTED

Representative Bolton moved to print remarks between Representative W. Smith and Representative Bolton.

The motion prevailed.

Representative W. Smith moved to adopt the conference committee report on **SB 792**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 792** prevailed by (Record 1883): 127 Yeas, 19 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Chavez; Chisum; Christian; Cohen; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Flores; Flynn; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Lucio; Madden; Mallory Caraway; Martinez; McCall; McReynolds; Menendez; Merritt; Miles; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Peña; Phillips; Pickett; Pierson; Pitts; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Swinford; Talton; Taylor; Truitt; Van Arsdale; Vaught; Vo; West; Woolley; Zedler; Zerwas.

Nays — Burnam; Castro; Coleman; Farias; Farrar; Frost; Hernandez; Laubenberg; Leibowitz; Macias; Martinez Fischer; McClendon; Miller; Paxton; Puente; Straus; Thompson; Veasey; Villarreal.

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



(2) "Enrollee" means an individual who is eligible to receive health care services under a managed care plan.

(3) "Health care provider" means:

(A) an individual who is licensed, certified, or otherwise authorized to provide health care services in this state; or

(B) a hospital, emergency clinic, outpatient clinic, or other facility providing health care services.

(4) "Managed care plan" means a health benefit plan under which health care services are provided to enrollees through contracts with health care providers and that requires enrollees to use participating providers or that provides a different level of coverage for enrollees who use participating providers. The term includes a health benefit plan issued by:

(A) a health maintenance organization;

(B) a preferred provider benefit plan issuer; or

(C) any other entity that issues a health benefit plan, including an insurance company.

(5) "Medical group" means a professional corporation or other business entity composed of licensed physicians as permitted under Subchapter B, Chapter 162, Occupations Code.

(6) "Participating provider" means a health care provider who has contracted with a health benefit plan issuer to provide services to enrollees.

Sec. 1452.102. APPLICABILITY. This subchapter applies only to a physician who joins an established medical group that has a current contract in force with a managed care plan.

Sec. 1452.103. ELIGIBILITY REQUIREMENTS. To qualify for expedited credentialing under this subchapter and payment under Section 1452.104, an applicant physician must:

(1) be licensed in this state by, and in good standing with, the Texas Medical Board;

(2) submit all documentation and other information required by the issuer of the managed care plan as necessary to enable the issuer to begin the credentialing process required by the issuer to include a physician in the issuer's health benefit plan network; and

(3) agree to comply with the terms of the managed care plan's participating provider contract currently in force with the applicant physician's established medical group.

Sec. 1452.104. PAYMENT OF APPLICANT PHYSICIAN DURING CREDENTIALING PROCESS. On submission by the applicant physician of the information required by the managed care plan issuer under Section 1452.103(2), and for payment purposes only, the issuer shall treat the applicant physician as if the physician were a participating provider in the health benefit plan network when the applicant physician provides services to the managed care plan's enrollees, including:

(1) authorizing the applicant physician to collect copayments from the enrollees; and

(2) making payments to the applicant physician.

Sec. 1452.105. DIRECTORY ENTRIES. Pending the approval of an application submitted under Section 1452.104, the managed care plan may exclude the applicant physician from the managed care plan's directory of participating physicians, the managed care plan's website listing of participating physicians, or any other listing of participating physicians.

Sec. 1452.106. EFFECT OF FAILURE TO MEET CREDENTIALING REQUIREMENTS. If, on completion of the credentialing process, the managed care plan issuer determines that the applicant physician does not meet the issuer's credentialing requirements:

(1) the managed care plan issuer may recover from the applicant physician or the physician's medical group an amount equal to the difference between payments for in-network benefits and out-of-network benefits; and

(2) the applicant physician or the physician's medical group may retain any copayments collected or in the process of being collected as of the date of the issuer's determination.

Sec. 1452.107. ENROLLEE HELD HARMLESS. An enrollee in the managed care plan is not responsible and shall be held harmless for the difference between in-network copayments paid by the enrollee to a physician who is determined to be ineligible under Section 1452.106 and the managed care plan's charges for out-of-network services. The physician and the physician's medical group may not charge the enrollee for any portion of the physician's fee that is not paid or reimbursed by the enrollee's managed care plan.

Sec. 1452.108. LIMITATION ON MANAGED CARE ISSUER LIABILITY. A managed care plan issuer that complies with this subchapter is not subject to liability for damages arising out of or in connection with, directly or indirectly, the payment by the issuer of an applicant physician as if the physician were a participating provider in the health benefit plan network.

SECTION 2. Section 843.203, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) For purposes of this subchapter, an applicant physician, as defined by Chapter 1452, may not be considered to be an available primary care physician or primary care provider within the health maintenance organization delivery network for selection by an enrollee.

SECTION 3. The change in law made by this Act applies only to credentialing of a physician under a contract entered into or renewed by a medical group and an issuer of a managed care plan on or after the effective date of this Act. A contract entered into or renewed 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 4. This Act takes effect September 1, 2007.

Representative Zerwas moved to adopt the conference committee report on **HB 1594**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1594** prevailed by (Record 1884): 144 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent, Excused — Harless.

Absent — Farias; Merritt; 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. 1).

### 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. 47).

#### HR 2790 - ADOPTED (by Giddings)

Representative Giddings moved to suspend all necessary rules to take up and consider at this time **HR 2790**.

The motion prevailed.

The following resolution was laid before the house:

**HR 2790**, Honoring Beverly Humphrey for her success as Lancaster High School athletic director and head coach of the girls track and field team.

**HR 2790** was adopted.

#### HR 2860 - ADOPTED (by Herrero)

Representative Herrero moved to suspend all necessary rules to take up and consider at this time **HR 2860**.

The motion prevailed.

The following resolution was laid before the house:

**HR 2860**, In memory of U.S. Army Sergeant Anselmo Martinez III of Robstown.

**HR 2860** was read and was unanimously adopted by a rising vote.

On motion of Representative Anderson, the names of all the members of the house were added to **HR 2860** as signers thereof.

**HR 2802 - ADOPTED**

**(by Truitt)**

Representative Truitt moved to suspend all necessary rules to take up and consider at this time **HR 2802**.

The motion prevailed.

The following resolution was laid before the house:

**HR 2802**, Congratulating Kristopher Puddy and Ragan Clay of Euless on their marriage.

**HR 2802** was adopted.

**HR 2858 - ADOPTED**

**(by Truitt)**

Representative Truitt moved to suspend all necessary rules to take up and consider at this time **HR 2858**.

The motion prevailed.

The following resolution was laid before the house:

**HR 2858**, Commending Lyle H. Dresher for his exemplary service as city manager of Keller.

**HR 2858** was adopted.

**HR 2803 - ADOPTED**

**(by O'Day and Bonnen)**

Representative O'Day moved to suspend all necessary rules to take up and consider at this time **HR 2803**.

The motion prevailed.

The following resolution was laid before the house:

**HR 2803**, In memory of George Alvin Otto of Manvel.

**HR 2803** was read and was unanimously adopted by a rising vote.

On motion of Representative Macias, the names of all the members of the house were added to **HR 2803** as signers thereof.

**HR 2866 - ADOPTED**  
**(by West)**

Representative West moved to suspend all necessary rules to take up and consider at this time **HR 2866**.

The motion prevailed.

The following resolution was laid before the house:

**HR 2866**, In memory of U.S. Army Staff Sergeant Kristopher Allan Higdon of Odessa.

**HR 2866** 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 2866** as signers thereof.

**HR 2853 - ADOPTED**  
**(by Zedler)**

Representative Zedler moved to suspend all necessary rules to take up and consider at this time **HR 2853**.

The motion prevailed.

The following resolution was laid before the house:

**HR 2853**, Commending Melba McDow of Tarrant County for her civic service and political activism.

**HR 2853** was adopted.

(Taylor in the chair)

**RESOLUTIONS ADOPTED**

Representative Guillen moved to suspend all necessary rules in order to take up and consider at this time **HR 2696 - HR 2780**.

The motion prevailed.

The following resolutions were laid before the house:

**HR 2696** (by Guillen), Honoring Sergio Arturo Serna of the Zapata County Sheriff's Department for his service to his community.

**HR 2697** (by Guillen), Honoring Ronald Smithwick of the Duval County Sheriff's Department for his service to his community.

**HR 2698** (by Guillen), Honoring Joaquin Solis of the Zapata County Sheriff's Department for his service to his community.

**HR 2699** (by Guillen), Honoring Corina Solis of the Zapata Independent School District for her service to her community.

**HR 2700** (by Guillen), Honoring Lauro Tanguma of the Roma Independent School District for his service to his community.

**HR 2701** (by Guillen), Honoring Arlina G. Thatcher of the Zapata Independent School District for her service to her community.

**HR 2702** (by Guillen), Honoring Tammy S. Trejo of the Duval County Sheriff's Department for her service to her community.

**HR 2703** (by Guillen), Honoring Rebecca Trevino of the Roma Independent School District for her service to her community.

**HR 2704** (by Guillen), Honoring Cayetano H. Trevino of the Roma Independent School District for his service to his community.

**HR 2705** (by Guillen), Honoring Nora Trevino of the Roma Independent School District for her service to her community.

**HR 2706** (by Guillen), Honoring Randy Trigo of the Duval County Sheriff's Department for his service to his community.

**HR 2707** (by Guillen), Honoring Juan M. Valadez of the Zapata County Sheriff's Department for his service to his community.

**HR 2708** (by Guillen), Honoring Bruno E. Valdez of the Duval County Sheriff's Department for his service to his community.

**HR 2709** (by Guillen), Honoring Amelia A. Vera of the Roma Independent School District for her service to her community.

**HR 2710** (by Guillen), Honoring Gilbert Ybanez of the Duval County Sheriff's Department for his service to his community.

**HR 2711** (by Guillen), Honoring Amalia S. Yunes of the Roma Independent School District for her service to her community.

**HR 2712** (by Guillen), Honoring Yamil Yunes of the Roma Independent School District for her service to her community.

**HR 2713** (by Guillen), Honoring Irma Hilda Munoz of the Roma Independent School District for her service to her community.

**HR 2714** (by Guillen), Honoring Noemi G. Munoz of the Roma Independent School District for her service to her community.

**HR 2715** (by Guillen), Honoring Graciela M. Munoz of the Roma Independent School District for her service to her community.

**HR 2716** (by Guillen), Honoring Elva N. Munoz of the Roma Independent School District for her service to her community.

**HR 2717** (by Guillen), Honoring Juan H. Navarro of the Zapata County Sheriff's Department for his service to his community.

**HR 2718** (by Guillen), Honoring Erasmo Navarro of the Roma Independent School District for his service to his community.

**HR 2719** (by Guillen), Honoring Enrique Pena of the Zapata County Sheriff's Department for his service to his community.

**HR 2720** (by Guillen), Honoring Mary Lou Pena of the Roma Independent School District for her service to her community.

**HR 2721** (by Guillen), Honoring Elvia I. Pena of the Roma Independent School District for her service to her community.

**HR 2722** (by Guillen), Honoring Antonia B. Perez of the Duval County Sheriff's Department for her service to her community.

**HR 2723** (by Guillen), Honoring Juan M. Perez of the Duval County Sheriff's Department for his service to his community.

**HR 2724** (by Guillen), Honoring Ricardo A. Perez of the Roma Independent School District for his service to his community.

**HR 2725** (by Guillen), Honoring Luis F. Pizzinni of the Duval County Sheriff's Department for his service to his community.

**HR 2726** (by Guillen), Honoring Romeo Ramirez of the Duval County Sheriff's Department for his service to his community.

**HR 2727** (by Guillen), Honoring Victor M. Ramirez of the Roma Independent School District for his service to his community.

**HR 2728** (by Guillen), Honoring Sylvia M. Ramirez of the Roma Independent School District for her service to her community.

**HR 2729** (by Guillen), Honoring Betty G. Ramirez of the Roma Independent School District for her service to her community.

**HR 2730** (by Guillen), Honoring Roberto E. Ramon of the Roma Independent School District for his service to his community.

**HR 2731** (by Guillen), Honoring Alvilda Recio of the Roma Independent School District for her service to her community.

**HR 2732** (by Guillen), Honoring Gabriel E. Recio of the Roma Independent School District for his service to his community.

**HR 2733** (by Guillen), Honoring Maria Eva H. Riojas of the Roma Independent School District for her service to her community.

**HR 2734** (by Guillen), Honoring Maria G. Rios of the Roma Independent School District for her service to her community.

**HR 2735** (by Guillen), Honoring Baldomero Rivera, Jr., of the Zapata County Sheriff's Department for his service to his community.

**HR 2736** (by Guillen), Honoring Minerva Rodriguez of the Roma Independent School District for her service to her community.

**HR 2737** (by Guillen), Honoring Manuel D. Ruiz of the Duval County Sheriff's Department for his service to his community.

**HR 2738** (by Guillen), Honoring Yvonne M. Saenz of the Roma Independent School District for her service to her community.

**HR 2739** (by Guillen), Honoring Norabel Salinas of the Roma Independent School District for her service to her community.

**HR 2740** (by Guillen), Honoring Clara P. Salinas of the Roma Independent School District for her service to her community.

**HR 2741** (by Guillen), Honoring Aaron Sanchez of the Zapata County Sheriff's Department for his service to his community.

**HR 2742** (by Guillen), Honoring Moises Sanchez of the Roma Independent School District for his service to his community.

**HR 2743** (by Guillen), Honoring Violeta A. Sandoval of the Roma Independent School District for her service to her community.

**HR 2744** (by Guillen), Honoring Victor Sermino of the Zapata County Sheriff's Department for his service to his community.

**HR 2745** (by Guillen), Honoring Magdalena F. Alaniz of the Roma Independent School District for her service to her community.

**HR 2746** (by Guillen), Honoring Juan A. Alaniz of the Roma Independent School District for his service to his community.

**HR 2747** (by Guillen), Honoring Arlina Alaniz of the Roma Independent School District for her service to her community.

**HR 2748** (by Guillen), Honoring Alma M. Alvarado of the Roma Independent School District for her service to her community.

**HR 2749** (by Guillen), Honoring Ana Maria Alvarez of the Roma Independent School District for her service to her community.

**HR 2750** (by Guillen), Honoring Arlina G. Thatcher of the Zapata Independent School District for her service to her community.

**HR 2751** (by Guillen), Commending Frank Balli of the Roma Independent School District for his service to his community.

**HR 2752** (by Guillen), Honoring Rosa Blanca Barrera of the Roma Independent School District for her service to her community.

**HR 2753** (by Guillen), Honoring Mario E. Barrera of the Roma Independent School District for his service to his community.

**HR 2754** (by Guillen), Honoring Ramon R. Benavides of the Zapata County Sheriff's Department for his service to his community.

**HR 2755** (by Guillen), Honoring Luz Maria Canales of the Roma Independent School District for her service to her community.

**HR 2756** (by Guillen), Honoring Sylvia Canales of the Roma Independent School District for her service to her community.

**HR 2757** (by Guillen), Honoring Noel Cantu of the Duval County Sheriff's Department for his service to his community.

**HR 2758** (by Guillen), Honoring Martina Cantu of the Roma Independent School District for her service to her community.

**HR 2759** (by Guillen), Honoring Edna M. Cantu of the Roma Independent School District for her service to her community.

**HR 2760** (by Guillen), Honoring Rosabel Cavazos of the Duval County Sheriff's Department for her service to her community.

**HR 2761** (by Guillen), Honoring Crisanto Cavazos of the Roma Independent School District for his service to his community.

**HR 2762** (by Guillen), Honoring Jesus G. Chapa of the Zapata County Sheriff's Department for his service to his community.

**HR 2763** (by Guillen), Honoring Evangelina G. Chavez of the Roma Independent School District for her service to her community.

**HR 2764** (by Guillen), Honoring Guillermo de la Garza of the Roma Independent School District for his service to his community.

**HR 2765** (by Guillen), Honoring Gudilla C. De Matias of the Roma Independent School District for her service to her community.

**HR 2766** (by Guillen), Honoring Sara R. Delgado of the Duval County Sheriff's Department for her service to her community.

**HR 2767** (by Guillen), Honoring Bernard Delgado of the Roma Independent School District for his service to his community.

**HR 2768** (by Guillen), Honoring Mario Elizondo of the Zapata County Sheriff's Department for his service to his community.

**HR 2769** (by Guillen), Honoring Salvador Elizondo of the Zapata County Sheriff's Department for his service to his community.

**HR 2770** (by Guillen), Honoring Abelizario Escalante of the Duval County Sheriff's Department for his service to his community.

**HR 2771** (by Guillen), Honoring Jaime Escobar of the Roma Independent School District for his service to his community.

**HR 2772** (by Guillen), Honoring Yolanda S. Escobar of the Roma Independent School District for her service to her community.

**HR 2773** (by Guillen), Honoring Olga V. Escobar of the Roma Independent School District for her service to her community.

**HR 2774** (by Guillen), Honoring Norma Nellie Escobar of the Roma Independent School District for her service to her community.

**HR 2775** (by Guillen), Honoring Mario Cesar Escobar of the Roma Independent School District for his service to his community.

**HR 2776** (by Guillen), Honoring Olga O. Escobar of the Roma Independent School District for her service to her community.

**HR 2777** (by Guillen), Honoring Lauro Escobar of the Roma Independent School District for his service to his community.

**HR 2778** (by Guillen), Honoring Edmundo Escobar of the Roma Independent School District for his service to his community.

**HR 2779** (by Guillen), Honoring Maria Magdalena Escobar of the Roma Independent School District for her service to her community.

**HR 2780** (by Guillen), Honoring Ovidio Espinoza, Jr., of the Duval County Sheriff's Department for his service to his community.

The resolutions were adopted.

### **RESOLUTIONS ADOPTED**

Representative Hughes moved to suspend all necessary rules in order to take up and consider at this time **HR 2799**, **HR 2813**, **HR 2843**, **HR 2847**, **HR 2849**, **HR 2865**, **HR 2867**, and **HR 2869**.

The motion prevailed.

The following resolutions were laid before the house:

**HR 2799** (by Hughes), Honoring Ruth Lott on her receipt of the Distinguished Lifetime Achievement Award from the Mineola Chamber of Commerce.

**HR 2813** (by Hughes), Recognizing October 23, 2007, and October 23, 2008, as Texas Paralegal Day.

**HR 2843** (by Hughes), Congratulating Kacey Musgraves of Mineola on being chosen as a finalist on the Nashville Star television program.

**HR 2847** (by Hughes), Recognizing Faye Chesteen Hughes on her 80th birthday.

**HR 2849** (by Hughes, et al.), Congratulating Dr. Dale A. Lunsford on being named the sixth president of LeTourneau University.

**HR 2865** (by Hughes), Congratulating Sammy Dee Lange on his election as mayor of Quitman.

**HR 2867** (by Hughes, et al.), Congratulating the Honorable Brian Hoyle of Longview on his elevation to the 12th Court of Appeals.

**HR 2869** (by Hughes, et al.), Congratulating Faye Chesteen Hughes on her 80th birthday.

The resolutions were adopted.

### **HB 3838 - HOUSE DISCHARGES CONFEREES HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

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

**HB 3838**, A bill to be entitled An Act relating to regulation of injection wells used for in situ uranium recovery by the Texas Commission on Environmental Quality.

Representative Gonzalez Toureilles moved to discharge the conferees and concur in the senate amendments to **HB 3838**.

A record vote was requested.

The motion to discharge conferees and concur in senate amendments prevailed by (Record 1885): 146 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anderson; Aycock; Bailey; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Thompson; Truitt; Turner; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent, Excused — Harless.

Absent — Anchia.

### **Senate Committee Substitute**

**CSHB 3838**, A bill to be entitled An Act relating to regulation of injection wells used for in situ uranium recovery by the Texas Commission on Environmental Quality.

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

SECTION 1. Section 27.002, Water Code, is amended by amending Subdivisions (1) and (2) and adding Subdivisions (16), (17), and (18) to read as follows:

(1) "Commission" means the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~].

(2) "Executive director" means the executive director of the commission [~~Texas Natural Resource Conservation Commission~~].

(16) "Production well" means a well used to recover uranium through in situ solution recovery, including an injection well used to recover uranium. The term does not include a well used to inject waste.

(17) "Monitoring well" means a well that is used to measure or monitor the level, quality, quantity, or movement of subsurface water.

(18) "Area permit" means a permit that authorizes the construction and operation of production and monitoring wells used in operations and restoration associated with in situ recovery of uranium.

SECTION 2. Subchapter B, Chapter 27, Water Code, is amended by adding Sections 27.023 and 27.024 to read as follows:

Sec. 27.023. JURISDICTION OVER IN SITU URANIUM APPLICATION DEVELOPMENT AND OPERATIONS. (a) The commission has exclusive jurisdiction over and shall regulate wells used during the development of permit applications to obtain required premining geologic, hydrologic, and water quality information.

(b) The commission shall require a well described by Subsection (a) to be registered with the commission. A well described by Subsection (a) is not subject to the commission's permitting, notice, and hearing requirements.

(c) If a well described by Subsection (a) is included in an area permit issued by the commission:

(1) the registration status of the well ceases; and

(2) the well is subject to all rules applicable to the area permit, including notice and hearing requirements.

Sec. 27.024. SHARING OF GEOLOGIC, HYDROLOGIC, AND WATER QUALITY DATA. (a) After a person developing an application for an area permit for an area located in a groundwater conservation district has identified a permit boundary, the person shall provide to that district:

(1) information regarding wells encountered by that person during the development of the area permit application that are not recorded in the public record;

(2) a map showing the locations of wells that are located within one-quarter mile of the location for the proposed permit and that are recorded in the public record;

(3) premining water quality information collected from wells described by Section 27.023(a);

(4) on a monthly basis, the amount of water produced from the wells described by Section 27.023(a); and

(5) a record of strata as described by Section 27.053, except confidential information described by Section 131.048, Natural Resources Code.

(b) A person may take not more than 90 days after the person receives the final information described by Subsection (a) to perform standard quality control and quality assurance procedures before the person submits the information to the groundwater conservation district.

SECTION 3. Section 27.053, Water Code, is amended to read as follows:

Sec. 27.053. RECORD OF STRATA. The commission or railroad commission may require a person receiving a permit or authorization by rule under this chapter to keep and furnish a complete and accurate record of the depth, thickness, and character of the different strata penetrated in drilling an [the] injection well, monitoring well, or production well.

SECTION 4. Section 27.054, Water Code, is amended to read as follows:

Sec. 27.054. ELECTRIC OR DRILLING LOG. If an existing well is to be converted to an injection well, monitoring well, or production well, the commission or railroad commission may require the applicant to furnish an electric log or a drilling log of the existing well.

SECTION 5. Section 27.071, Water Code, is amended to read as follows:

Sec. 27.071. POWER TO ENTER PROPERTY. Members of the commission and the railroad commission and employees of the commission and the railroad commission may enter public or private property to inspect and investigate conditions relating to injection well, monitoring well, [or] disposal well, or production well activities within their respective jurisdictions or to monitor compliance with a rule, permit, or other order of the commission or railroad commission. Members or employees acting under the authority of this section who enter an establishment on public or private property shall observe the establishment's safety, internal security, and fire protection rules.

SECTION 6. Section 27.072, Water Code, is amended to read as follows:

Sec. 27.072. POWER TO EXAMINE RECORDS. Members of the commission and the railroad commission and employees of the commission and railroad commission may examine and copy those records or memoranda of a business they are investigating as provided by Section 27.071 of this code that relate to the operation of an injection well, monitoring well, [or] disposal well, or production well, or any other records required to be maintained by law.

SECTION 7. Section 27.073, Water Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) Notwithstanding Subsection (a), a person to whom an in situ uranium mining injection well, monitoring well, or production well permit is issued shall be required by the commission to maintain a performance bond or other form of financial security to ensure that an abandoned well is properly plugged.

SECTION 8. This Act takes effect September 1, 2007.

### RESOLUTIONS ADOPTED

Representative Gallego moved to suspend all necessary rules in order to take up and consider at this time **HR 2784 - HR 2786**.

The motion prevailed.

The following resolutions were laid before the house:

**HR 2784** (by Gallego), In memory of Clayton McKinney.

**HR 2785** (by Gallego), In memory of Irene Pena Villarreal of San Antonio

**HR 2786** (by Gallego), In memory of Martin Shuster of Fort Stockton.

The resolutions were unanimously adopted by a rising vote.

On motion of Representative Hochberg, the names of all the members of the house were added to **HR 2784 - HR 2786** as signers thereof.

**HR 2783 - ADOPTED**  
**(by Gallego)**

Representative Gallego moved to suspend all necessary rules to take up and consider at this time **HR 2783**.

The motion prevailed.

The following resolution was laid before the house:

**HR 2783**, Recognizing Dharell Campbell on his retirement from the Del Rio Fire and Rescue Department.

**HR 2783** was adopted.

On motion of Representative Hochberg, the names of all the members of the house were added to **HR 2783** as signers thereof.

**HB 3275 - HOUSE DISCHARGES CONFEREES**  
**HOUSE CONCURS IN SENATE AMENDMENTS**  
**TEXT OF SENATE AMENDMENTS**

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

**HB 3275**, A bill to be entitled An Act relating to the distribution of federal funds for highway projects.

Representative Miller moved to discharge the conferees and concur in the senate amendments to **HB 3275**.

A record vote was requested.

The motion to discharge conferees and concur in senate amendments prevailed by (Record 1886): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycok; Bailey; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Swinford; Talton; Thompson; Truitt; Turner; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent, Excused — Harless.

Absent — Gallego; Hochberg; Krusee; Kuempel; Straus.

### STATEMENT OF VOTE

When Record No. 1886 was taken, I was in the house but away from my desk. I would have voted yes.

Kuempel

### Senate Committee Substitute

**CSHB 3275**, A bill to be entitled An Act relating to a study regarding the distribution of funds for highway projects.

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

SECTION 1. (a) The Texas Transportation Commission shall conduct a study of the feasibility of prioritizing the distribution of funds to highway projects that enhance federally designated emergency evacuation routes. The study must determine the sources of funds available for those projects.

(b) Not later than January 15, 2009, the Texas Transportation Commission shall submit to the legislature a written report containing the findings of the study and the commission's recommendations.

(c) This section expires September 1, 2009.

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, 2007.

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

Amend **HB 3275** by adding an appropriately numbered SECTION to read as follows and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_. The Texas Department of Transportation and The Office of the Governor, Economic Development and Tourism Division will conduct a study involving their respective departments, the tourism industry, general aviation airports, and pilots in a review of the Texas Airport Directory and how it can be improved to contribute to tourism and economic development in Texas. The study shall consider the potential for including paid advertising and reducing or eliminating the directory fee.

### HOUSE AT EASE

At 2:02 p.m., the chair announced that the house would stand at ease until 2:40 p.m. today.

The speaker pro tempore called the house to order at 2:52 p.m.

### HR 2859 - ADOPTED (by McReynolds)

The following privileged resolution was laid before the house:

**HR 2859**

BE IT RESOLVED by the House of Representatives of the State of Texas, 80th Legislature, Regular Session, 2007, 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 993** (nursing peer review and the regulation of the practice of nursing) to consider and take action on the following matter:

House Rule 13, Sections 9(a)(3) and (4), are suspended to permit the committee to add new text to Section 301.355(a), Occupations Code, to read as follows:

(a) The president of a medical and dental unit, as defined by Section 61.003, Education Code, shall determine whether a nurse who is employed by the unit for practice in patient care or in clinical activities is a full-time employee for purposes of:

(1) employees group benefits under Chapter 1551 or 1601, Insurance Code;

(2) leave under Chapter 661 or 662, Government Code; and

(3) longevity pay under Section 659.043, Government Code.

Explanation: The change is necessary to require the president of a medical or dental unit to determine whether certain nurses are full-time employees for purposes of employees group benefits under Chapter 1601, Insurance Code, and leave under Chapter 662, Government Code.

**HR 2859** was adopted.

**SB 993 - ADOPTION OF CONFERENCE COMMITTEE REPORT**

Representative McReynolds submitted the conference committee report on **SB 993**.

Representative McReynolds moved to adopt the conference committee report on **SB 993**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 993** prevailed by (Record 1887): 139 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hochberg; Hodge; Homer; Hopson; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Kuempel; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller;

Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Peña; Phillips; Pickett; Pierson; Pitts; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent, Excused — Harless.

Absent — Hill; Howard, C.; Krusee; Latham; Paxton; Puente; Smith, W.; Veasey.

**HR 2854 - MOTION TO ADOPT**  
**(by P. King)**

The following privileged resolution was laid before the house:

**HR 2854**

BE IT RESOLVED by the House of Representatives of the State of Texas, 80th Legislature, Regular Session, 2007, 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 482** (competition and customer choice in the retail electric power market) 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 sections to the bill, to amend Sections 15.023(b) and (d), Utilities Code, and Section 15.024(f), Utilities Code, to read:

SECTION 1. Sections 15.023(b) and (d), Utilities Code, are amended to read as follows:

(b) The penalty for a violation may be in an amount not to exceed \$25,000 except as provided by Section 39.157. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(d) The classification system established under Subsection (c) shall provide that a penalty in an amount that exceeds \$5,000 may be assessed only if the violation is included in the highest class of violations in the classification system. Violations of Section 39.157 shall be included in the highest class of violations.

SECTION 2. Section 15.024(f), Utilities Code, is amended to read as follows:

(f) If the person requests a hearing or fails to timely respond to the notice, the executive director shall set a hearing and give notice of the hearing to the person. The hearing shall be held in accordance with Subchapter B, Chapter 14 [by an administrative law judge of the State Office of Administrative Hearings]. For hearings conducted by the State Office of Administrative Hearings, the [The] administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commission a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the commission by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

Explanation: The addition of those sections to the bill is necessary both to clarify the applicability of Sections 15.023 and 15.024, Utilities Code, when a penalty may be imposed as provided by Section 39.157, Utilities Code, as amended by the bill, and to clarify the authority of the Public Utility Commission of Texas to conduct hearings in administrative penalty matters.

(2) House Rule 13, Section 9(a)(2), is suspended to permit the committee to omit amended Section 39.101(h), Utilities Code, from the bill.

Explanation: The change is necessary to retain the current law's flexibility and certainty concerning the period for deferrals of electric utility bill payments because of extreme weather.

(3) House Rule 13, Sections 9(a)(3) and (4), are suspended to permit the committee to add the following Subsection (i) to added Section 39.1015, Utilities Code, to read:

(i) This section does not apply to metered electric service sold to residential customers on a prepaid basis.

Explanation: The change is necessary to prevent the application of the prohibition on disconnecting certain customers' electric service, intended to apply to customers with whom arrangements are made for periodic payments for service, to differently situated prepaid electric service customers.

(4) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following sections to the bill, to amend Sections 39.262(c), 39.301, 39.302(4), 39.303(a), and 39.303(b), Utilities Code, to read:

SECTION 15. Section 39.262(c), Utilities Code, is amended to read as follows:

(c) After January 10, 2004, at a schedule and under procedures to be determined by the commission, each transmission and distribution utility, its affiliated retail electric provider, and its affiliated power generation company shall jointly file to finalize stranded costs under Subsections (h) and (i) and reconcile those costs with the estimated stranded costs used to develop the competition transition charge in the proceeding held under Section 39.201. Any resulting difference shall be applied to the nonbypassable delivery rates of the transmission and distribution utility, except that at the utility's option, any or all of the amounts recovered under this section [remaining stranded costs] may be securitized under Subchapter G.

SECTION 16. Section 39.301, Utilities Code, is amended to read as follows:

Sec. 39.301. PURPOSE. The purpose of this subchapter is to enable utilities to use securitization financing to recover regulatory assets, all other amounts determined under Section 39.262, and any amounts being recovered under a competition transition charge determined as a result of the proceedings under Sections 39.201 and 39.262. This [and stranded costs, because this] type of debt will lower the carrying costs of the assets relative to the costs that would be incurred using conventional utility financing methods. The proceeds of the transition bonds shall be used solely for the purposes of reducing the amount of recoverable regulatory assets and other amounts [stranded costs], as determined by the commission in accordance with this chapter, through the refinancing or retirement of utility debt or equity. The commission shall ensure that

securitization provides tangible and quantifiable benefits to ratepayers, greater than would have been achieved absent the issuance of transition bonds. The commission shall ensure that the structuring and pricing of the transition bonds result in the lowest transition bond charges consistent with market conditions and the terms of the financing order. The amount securitized may not exceed the present value of the revenue requirement over the life of the proposed transition bond associated with the regulatory assets or other amounts [~~stranded costs~~] sought to be securitized. The present value calculation shall use a discount rate equal to the proposed interest rate on the transition bonds.

SECTION 17. Section 39.302(4), Utilities Code, is amended to read as follows:

(4) "Qualified costs" means 100 percent of an electric utility's regulatory assets and 75 percent of its recoverable costs determined by the commission under Section 39.201 and any remaining amounts [~~stranded costs~~] determined under Section 39.262 together with the costs of issuing, supporting, and servicing transition bonds and any costs of retiring and refunding the electric utility's existing debt and equity securities in connection with the issuance of transition bonds. The term includes the costs to the commission of acquiring professional services for the purpose of evaluating proposed transactions under Section 39.201 and this subchapter.

SECTION 18. Sections 39.303(a) and (b), Utilities Code, are amended to read as follows:

(a) The commission shall adopt a financing order, on application of a utility to recover the utility's regulatory assets and other amounts determined [~~eligible stranded costs~~] under Section 39.201 or 39.262, on making a finding that the total amount of revenues to be collected under the financing order is less than the revenue requirement that would be recovered over the remaining life of the regulatory assets or other amounts [~~stranded costs~~] using conventional financing methods and that the financing order is consistent with the standards in Section 39.301.

(b) The financing order shall detail the amount of regulatory assets and other amounts [~~stranded costs~~] to be recovered and the period over which the nonbypassable transition charges shall be recovered, which period may not exceed 15 years. If an amount determined under Section 39.262 is subject to judicial review at the time of the securitization proceeding, the financing order shall include an adjustment mechanism requiring the utility to adjust its rates, other than transition charges, or provide credits, other than credits to transition charges, in a manner that would refund over the remaining life of the transition bonds any overpayments resulting from securitization of amounts in excess of the amount resulting from a final determination after completion of all appellate reviews. The adjustment mechanism may not affect the stream of revenue available to service the transition bonds. An adjustment may not be made under this subsection until all appellate reviews, including, if applicable, appellate reviews following a commission decision on remand of its original orders, have been completed.

Explanation: The addition of those sections to the bill is necessary to enable certain utilities to use securitization financing to recover, in addition to regulatory assets, amounts determined in a true-up proceeding under Subchapter F, Chapter 39, Utilities Code, and amounts being recovered under a competition transition charge under Subchapter E or F, Chapter 39, Utilities Code.

### **SB 482 - STATEMENT OF LEGISLATIVE INTENT**

REPRESENTATIVE GONZALES: Representative King, when this bill first came up, I had added an amendment to ensure that the 15 percent rate cut was going to apply to the CP&L customers, which was the price to beat down in the Rio Grande Valley. Has that provision been taken out, the 15 percent cut for the Direct Energy customers?

REPRESENTATIVE P. KING: No, it has been split into two parts. That's actually going to be in the bill, when I lay it out, but I'll be happy to address that now. What we did for Direct is back-dated it to July 30, 2006, so that they would get credit for the 10 percent they had already given. The house passed it out at 15 percent across the board.

GONZALES: That's correct.

P. KING: They would have gotten credit for the 10 percent. The competitive retail electric providers argued that going to 15 percent would push them below what they're actually paying for their electricity, therefore they couldn't compete, and so the compromise was, with the senate, to require 10 percent across the board, with Direct getting its credit to July 30th, and then that 5 percent is effective September 1st, the additional 5 percent, but only if the PUC rules that it will not have an adverse impact on competition within that area. So the 10 percent, if it hasn't already been given, will go into effect July 1st of this year, and then the additional 5 percent on September 1st, pending a PUC ruling that it's not going to mess up competition.

GONZALES: And is it treating Direct Energy customers differently than it would other providers?

P. KING: No, they're all treated the same. The only thing we did to help Direct, originally the bill backed it up to—and I said July 30th, originally the bill had it at July 1, 2006, which was the last day the PUC set the price to beat, and Direct came out and said, "hey, the day before that, we gave a 10 percent discount."

GONZALES: I think it was a nine percent that they had given—

P. KING: Nine percent. So we just backed it up one more day to cover their good efforts.

GONZALES: I just want an assurance, and for legislative intent, I want to have it clear that they're not being treated any differently than any other provider in the state that's treating their customers, is that correct?

P. KING: That's exactly correct. They're being treated like all the other A Reps within ERCOT.

### REMARKS ORDERED PRINTED

Representative Gonzales moved to print remarks between Representative P. King and Representative Gonzales.

The motion prevailed.

### LEAVE OF ABSENCE GRANTED

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

Bailey on motion of Escobar.

### HR 2854 - (consideration continued)

A record vote was requested.

**HR 2854** failed of adoption by (Record 1888): 67 Yeas, 74 Nays, 4 Present, not voting. (The vote was reconsidered later today, and **HR 2854** was adopted by Record 1917.)

Yeas — Anderson; Aycock; Berman; Bohac; Bonnen; Brown, B.; Brown, F.; Callegari; Chisum; Christian; Cook, B.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Delisi; Driver; Dukes; Eissler; Farabee; Flynn; Gattis; Geren; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Hill; Hughes; Isett; Jackson; Keffer; King, P.; King, S.; Kolkhorst; Krusee; Latham; Laubenberg; Macias; Madden; Miller; Morrison; Mowery; Murphy; O'Day; Orr; Otto; Parker; Patrick; Paxton; Phillips; Riddle; Smith, T.; Smithee; Solomons; Straus; Swinford; Taylor; Truitt; Van Arsdale; Woolley; Zedler; Zerwas.

Nays — Allen; Alonzo; Anchia; Bolton; Branch; Burnam; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dunnam; Dutton; Eiland; Elkins; England; Escobar; Farias; Farrar; Flores; Frost; Gallego; Garcia; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Heflin; Hernandez; Herrero; Hilderbran; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Jones; King, T.; Kuempel; Leibowitz; Lucio; Mallory Caraway; Martinez; Martinez Fischer; McReynolds; Menendez; Merritt; Miles; Moreno; Naishtat; Oliveira; Olivo; Ortiz; Peña; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Rose; Smith, W.; Strama; Talton; Thompson; Vaught; Veasey; Villarreal; Vo; West.

Present, not voting — Mr. Speaker; Cohen; Noriega; Turner(C).

Absent, Excused — Bailey; Harless.

Absent — Cook, R.; McCall; McClendon.

**STATEMENT OF VOTE**

I was shown voting no on Record No. 1888. I intended to vote yes.

Kuempel

**HR 2868 - NOTICE OF INTRODUCTION**

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 2868**, suspending the limitations on the conferees for **HB 1031**.

**RESOLUTIONS ADOPTED**

Representative Anderson moved to suspend all necessary rules in order to take up and consider at this time **HR 2807 - HR 2811**.

The motion prevailed.

The following resolutions were laid before the house:

**HR 2807** (by Anderson), Congratulating Emily Rose Smith of Chalk Bluff on becoming a National Merit Commended Scholar.

**HR 2808** (by Anderson), Congratulating Luis Maldonado on his receipt of the Outstanding Youth Citizenship Award from the Waco Rotary Club.

**HR 2809** (by Anderson), Congratulating Janice Marie Kaluza of West on being named a Fraternal MVP by the National Fraternal Congress of America.

**HR 2810** (by Anderson), Congratulating Johnson Roofing on its selection as the 2007 Business of the Year by the Robinson Chamber of Commerce.

**HR 2811** (by Anderson), Recognizing Bull Hide Creek Farms of McLennan County for its induction into the Texas Department of Agriculture Family Land Heritage Program.

The resolutions were adopted.

**HR 2812 - ADOPTED  
(by Anderson)**

Representative Anderson moved to suspend all necessary rules to take up and consider at this time **HR 2812**.

The motion prevailed.

The following resolution was laid before the house:

**HR 2812**, In memory of Hugh Bob Fuller, Sr., of Waco.

**HR 2812** was unanimously adopted by a rising vote.

**HR 2862 - ADOPTED  
(by Anderson)**

Representative Anderson moved to suspend all necessary rules to take up and consider at this time **HR 2862**.

The motion prevailed.

The following resolution was laid before the house:

**HR 2862**, In memory of Dr. Herbert H. Reynolds of Waco.

**HR 2862** was unanimously adopted by a rising vote.

### 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).

### RESOLUTIONS ADOPTED

Representative Homer moved to suspend all necessary rules in order to take up and consider at this time **HCR 275**, **HCR 279**, and **HR 2842**.

The motion prevailed.

The following resolutions were laid before the house:

**HCR 275** (by Miles), In memory of Herriford "John" Williams of New Waverly.

**HCR 279** (by Homer), In memory of Lloyd R. Smith of Collinsville.

**HR 2842** (by Branch), In memory of the Honorable Judge Karen Jane Greene-Council of Dallas.

The resolutions were unanimously adopted by a rising vote.

### HCR 280 - ADOPTED (by Homer)

Representative Homer moved to suspend all necessary rules to take up and consider at this time **HCR 280**.

The motion prevailed.

The following resolution was laid before the house:

**HCR 280**, Honoring Dr. Charles Florio of Mt. Pleasant on his retirement as president of Northeast Texas Community College.

**HCR 280** was adopted.

On motion of Representative Hughes, the names of all the members of the house were added to **HCR 280** as signers thereof.

(Gattis in the chair)

### SB 548 - RULES SUSPENDED

Representative Hamilton moved to suspend all necessary rules to consider the conference committee report on **SB 548**.

A record vote was requested.

The motion prevailed by (Record 1889): 116 Yeas, 19 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Chavez; Chisum; Christian; Cohen; Cook, B.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Dukes; Eissler; Elkins; England; Escobar; Farabee;

Flores; Flynn; Frost; Gallego; Garcia; Geren; Giddings; Gonzales; Gonzalez Tourelles; Goolsby; Guillen; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Keffer; King, P.; King, S.; King, T.; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; McClendon; McReynolds; Miles; Miller; Morrison; Mowery; Murphy; Noriega; O'Day; Oliveira; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Riddle; Ritter; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Taylor; Truitt; Turner; Vaught; Vo; West; Woolley; Zerwas.

Nays — Burnam; Castro; Coleman; Dunnam; Eiland; Farias; Jones; Martinez Fischer; Menendez; Merritt; Moreno; Naishtat; Olivo; Pierson; Raymond; Rodriguez; Thompson; Veasey; Villarreal.

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

Absent, Excused — Bailey; Harless.

Absent — Cook, R.; Driver; Dutton; Farrar; Haggerty; Kolkhorst; Krusee; McCall; Talton; Van Arsdale; Zedler.

### **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. 52).

#### **SB 548 - ADOPTION OF CONFERENCE COMMITTEE REPORT**

Representative Hamilton submitted the conference committee report on **SB 548**.

(Speaker pro tempore in the chair)

Representative Hamilton moved to adopt the conference committee report on **SB 548**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 548** prevailed by (Record 1890): 76 Yeas, 56 Nays, 2 Present, not voting.

Yeas — Allen; Anderson; Aycok; Berman; Bohac; Branch; Brown, B.; Brown, F.; Chavez; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Delisi; Eissler; Elkins; Flynn; Frost; Gattis; Geren; Gonzales; Goolsby; Guillen; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Hilderbran; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Keffer; King, P.; King, S.; Kolkhorst; Kuempel; Laubenberg; Macias; Madden; McCall; McReynolds; Miller; Morrison; Mowery; Murphy; O'Day; Orr; Ortiz; Otto; Patrick; Phillips; Pickett; Pitts; Quintanilla; Riddle; Smith, W.; Smithee; Swinford; Talton; Taylor; Van Arsdale; Vaught; Vo; West; Woolley; Zedler; Zerwas.

Nays — Alonzo; Anchia; Bolton; Bonnen; Burnam; Callegari; Castro; Cohen; Coleman; Davis, Y.; Dukes; Dunnam; Dutton; England; Escobar; Farabee; Farias; Farrar; Flores; Gallego; Garcia; Gonzalez Toureilles; Haggerty; Heflin; Hernandez; Herrero; Hodge; Homer; Jones; King, T.; Leibowitz; Lucio; Mallory Caraway; Martinez; Martinez Fischer; McClendon; Menendez; Merritt; Miles; Moreno; Naishtat; Noriega; Oliveira; Olivo; Pierson; Puente; Raymond; Rodriguez; Rose; Smith, T.; Solomons; Strama; Thompson; Truitt; Veasey; Villarreal.

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

Absent, Excused — Bailey; Harless.

Absent — Deshotel; Driver; Eiland; Giddings; Hill; Hochberg; Hopson; Krusee; Latham; Parker; Paxton; Peña; Ritter; Straus.

### STATEMENTS OF VOTE

I was shown voting no on Record No. 1890. I intended to vote yes.

Herrero

I was shown voting no on Record No. 1890. I intended to vote yes.

Leibowitz

When Record No. 1890 was taken, I was in the house but away from my desk. I would have voted yes.

Parker

### MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 3).

### **SB 1846 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Truitt, the house granted the request of the senate for the appointment of a conference committee on **SB 1846**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1846**: Truitt, chair; McClendon, Kolkhorst, Otto, and Villarreal.

### **SB 1123 - ADOPTION OF CONFERENCE COMMITTEE REPORT**

Representative Miles submitted the conference committee report on **SB 1123**.

Representative Miles moved to adopt the conference committee report on **SB 1123**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 1123** prevailed by (Record 1891): 141 Yeas, 1 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Tourelles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Murphy; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Peña; Phillips; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

Nays — Crabb.

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

Absent, Excused — Bailey; Harless.

Absent — Latham; Mowery; Naishtat; Paxton.

**HB 2006 - HOUSE DISCHARGES CONFEREES  
HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

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

**HB 2006**, A bill to be entitled An Act relating to the use of eminent domain authority.

Representative Woolley moved to discharge the conferees and concur in the senate amendments to **HB 2006**.

**HB 2006 - STATEMENT OF LEGISLATIVE INTENT**

REPRESENTATIVE Y. DAVIS: Thank you, I appreciate, Chairwoman Woolley, you giving me an opportunity to talk about this. As you know, I had an amendment on this bill that dealt with relocation and replacement of property that was stripped off?

REPRESENTATIVE WOOLLEY: I do, Representative Davis, and I accepted that gladly from you.

Y. DAVIS: And I understand that it is your thought, based on some clarification from some of the lawyers, that, in fact, the relocation cost is covered in your bill currently.

WOOLLEY: Correct.

Y. DAVIS: And it is your thought that it includes language that would protect not only just relocating, but replacement of property to the owner, is that correct?

WOOLLEY: Correct.

Y. DAVIS: So it is your intent that in fact we may well have covered, in your bill, language that provides for economic loss, and mandates relocation based on economic loss and injury, is that correct?

WOOLLEY: That's correct.

### REMARKS ORDERED PRINTED

Representative Y. Davis moved to print remarks between Representative Woolley and Representative Y. Davis.

The motion prevailed.

A record vote was requested.

The motion to discharge conferees and concur in senate amendments to **HB 2006** prevailed by (Record 1892): 125 Yeas, 11 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Cook, R.; Corte; Crabb; Creighton; Crownover; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Tourelles; Goolsby; Guillen; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Jackson; Keffer; King, P.; King, T.; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Merritt; Miles; Moreno; Morrison; Mowery; Murphy; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Patrick; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Solomons; Strama; Straus; Swinford; Talton; Taylor; Truitt; Van Arsdale; Vaught; Veasey; Vo; West; Woolley; Zedler; Zerwas.

Nays — Coleman; Cook, B.; Haggerty; Hill; Isett; Jones; Krusee; Menendez; Raymond; Smithee; Villarreal.

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

Absent, Excused — Bailey; Harless.

Absent — Darby; Dutton; Farias; King, S.; Kolkhorst; Miller; Naishtat; Parker; Pierson; Thompson.

### STATEMENTS OF VOTE

When Record No. 1892 was taken, I was in the house but away from my desk. I would have voted yes.

Darby

When Record No. 1892 was taken, my vote failed to register. I would have voted yes.

S. King

When Record No. 1892 was taken, my vote failed to register. I would have voted yes.

Kolkhorst

When Record No. 1892 was taken, I was in the house but away from my desk. I would have voted yes.

Parker

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

Amend **HB 2006** (Senate Committee Printing) as follows:

(1) Strike SECTION 1 of the bill (page 3, line 66, through page 4, line 19).

(2) Add the following appropriately numbered SECTIONS to the bill:

SECTION \_\_\_\_\_. Subchapter B, Chapter 21, Property Code, is amended by adding Section 21.024 to read as follows:

Sec. 21.024. PRODUCTION OF INFORMATION BY CERTAIN ENTITIES. (a) Notwithstanding any other law, an entity that is not subject to Chapter 552, Government Code, and is authorized by law to acquire private property through the use of eminent domain is required to produce information as provided by this section if the information is:

(1) requested by a person who owns property that is the subject of a proposed or existing eminent domain proceeding; and

(2) related to the taking of the person's private property by the entity through the use of eminent domain.

(b) An entity described by Subsection (a) is required under this section only to produce information relating to the condemnation of the specific property owned by the requestor as described in the request. A request under this section must contain sufficient details to allow the entity to identify the specific tract of land in relation to which the information is sought.

(c) The entity shall respond to a request in accordance with the Texas Rules of Civil Procedure as if the request was made in a matter pending before a state district court.

(d) Exceptions to disclosure provided by this chapter and the Texas Rules of Civil Procedure apply to the disclosure of information under this section.

(e) Jurisdiction to enforce the provisions of this section resides in:

(1) the court in which the condemnation was initiated; or

(2) if the condemnation proceeding has not been initiated:

(A) a court that would have jurisdiction over a proceeding to condemn the requestor's property; or

(B) a court with eminent domain jurisdiction in the county in which the entity has its principal place of business.

(f) If the entity refuses to produce information requested in accordance with this section and the court determines that the refusal violates this section, the court may award the requestor's reasonable attorney's fees incurred to compel the production of the information.

(g) If an entity that received a request in accordance with this section does not produce the requested information on or before the 30th day after the request is made, the attorney general may file an action in a court described by Subsection (e) to enforce this section on the request of the person who made the request for the information. If the court determines that the failure to produce the information is a violation of this section, the court may award the attorney general's reasonable expenses incurred to compel the production of the information.

(h) If the attorney general files an action under Subsection (g), the person who requested that the attorney general file the action may not file a private action to enforce this section with respect to the same request for information.

SECTION \_\_\_\_\_. Section 552.0037, Government Code, is repealed.

(3) Renumber existing SECTIONS of the bill accordingly.

### **Senate Amendment No. 2 (Senate Floor Amendment No. 2)**

Amend **HB 2006** (Senate committee printing) as follows:

(1) In SECTION 2 of the bill, in Subdivision (2), Subsection (b), added Section 2206.051, Government Code (page 4, line 47), strike "or" and substitute "[or]".

(2) In SECTION 2 of the bill, in Subdivision (3), Subsection (b), added Section 2206.051, Government Code (page 4, line 56), between "Tax Code" and the period, insert the following:

; or

(4) is not for a public use

(3) In SECTION 2 of the bill, in Paragraph (A), Subdivision (7), Subsection (c), added Section 2206.051, Government Code (page 5, line 7), between "carrier" and "subject", insert "pipeline".

(4) In SECTION 2 of the bill, in Paragraph (A), Subdivision (7), Subsection (c), added Section 2206.051, Government Code (page 5, lines 7-8), strike "subject to Chapter 111, Natural Resources Code".

(5) In SECTION 2 of the bill, in added Subsection (a), Section 2206.103, Government Code (page 5, lines 38-39), strike "Except as provided by Subsection (b) or (d)," and substitute "If the motion required by Subsection (c) indicates that the first record vote applies to all units of property to be condemned, and the minutes of the entity reflect that the first vote applies to all of those units, a single ordinance, resolution, or order may be adopted for all of those units of property. If more than one member of the governing body objects to adopting a single ordinance, resolution, or order by a record vote for all units of property for which condemnation proceedings are to be initiated,".

(6) In SECTION 2 of the bill, in added Subsection (a), Section 2206.103, Government Code (page 5, lines 40-41), strike "for which condemnation proceedings are to be initiated".

(7) In SECTION 3 of the bill, in the recital (page 6, line 6), strike "Sections 21.0112 and 21.0113" and substitute "Section 21.0112".

(8) In SECTION 3 of the bill, in the heading of added Section 21.0112, Property Code (page 6, line 7), strike "GOOD FAITH STANDARD" and substitute "BONA FIDE OFFER REQUIRED".

(9) In SECTION 3 of the bill, in added Section 21.0112, Property Code (page 6, line 9), strike "good faith effort" and substitute "bona fide offer".

(10) In SECTION 3 of the bill, in added Section 21.0112, Property Code (page 6, line 10), after the period, insert "A bona fide offer is an offer that is not arbitrary or capricious and is based on a reasonably thorough investigation and honest assessment of the amount of the just compensation due to the landowner as a result of the taking."

(11) In SECTION 3 of the bill, strike added Section 21.0113, Property Code (page 6, lines 11-25).

(12) In SECTION 4 of the bill, in added Subdivision (5), Subsection (b), Section 21.012, Property Code (page 6, line 36), strike "good faith effort" and substitute "bona fide offer".

(13) Strike SECTION 6 of the bill (page 6, line 53, through page 7, line 4) and substitute the following:

SECTION 6. Section 21.041, Property Code, is amended to read as follows:

Sec. 21.041. EVIDENCE. (a) For the purposes of this section, market value is the price a property will bring when offered for sale by a person who desires to sell the property, but is not obliged to sell the property, and is bought by a person who desires to buy the property, but is not under a necessity to buy the property.

(b) As the basis for assessing actual damages to a property owner from a condemnation, the special commissioners shall, subject to the Texas Rules of Evidence, admit evidence on:

(1) the market value, before the condemnation, of the property being condemned;

(2) subject to Section 21.042, the net change to the market value of [the injury to the property owner;

[~~(3) the benefit to~~] the property owner's remaining property, considering both injury and benefit to the property owner; and

(3) ~~(4)~~ the use of the property for the purpose of the condemnation.

(14) Strike SECTION 7 of the bill (page 7, lines 5-14) and renumber subsequent SECTIONS of the bill accordingly.

(15) In SECTION 10 of the bill, strike added Subsection (d), Section 21.047, Property Code (page 7, lines 36-40), and substitute the following:

(d) If a court hearing a suit under this chapter determines that a condemning entity did not make a bona fide offer to acquire the property from the property owner voluntarily as required by Section 21.0112, the court shall abate the suit and order the condemnor to make a bona fide offer. If the court finds that by filing a petition under Section 21.012 or by filing any other motion or pleading in

the proceeding initiated by the filing of that petition the condemnor violated Chapter 10, Civil Practice and Remedies Code, the court shall order the condemnor to pay:

(1) all costs as provided by Subsection (a); and

(2) any reasonable attorney's fees incurred by the owner that are directly related to the violation.

(16) In SECTION 11 of the bill, in amended Subsection (a), Section 21.101, Property Code (page 7, line 45), between "entity" and "through", insert "other than a port that is acquiring property for deep water navigation".

(17) In SECTION 11 of the bill, in amended Subsection (a), Section 21.101, Property Code (page 7, line 49), between "acquisition" and the period, insert "or the governmental entity fails to begin the operation or construction of the project for which the property was acquired before the 10th anniversary of that date".

(18) Add the following appropriately numbered SECTIONS to the bill and renumber existing SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 21.102, Property Code, is amended to read as follows:

Sec. 21.102. NOTICE TO PREVIOUS PROPERTY OWNER AT TIME OF CANCELLATION OF PUBLIC USE OR ON FAILURE TO BEGIN OPERATION OR CONSTRUCTION OF PROJECT. Not later than the 180th day after the date of the cancellation of the public use for which real property was acquired through eminent domain from a property owner under Subchapter B or the 180th day after the 10th anniversary of the date on which the property was acquired if the governmental entity fails to begin the operation or construction of the project for which the property was acquired before the 10th anniversary of that date, the governmental entity shall send by certified mail, return receipt requested, to the property owner or the owner's heirs, successors, or assigns a notice containing:

(1) an identification, which is not required to be a legal description, of the property that was acquired;

(2) an identification of the public use for which the property had been acquired and a statement that the public use has been canceled or the governmental entity has failed to begin the operation or construction of the project for which the property was acquired; and

(3) a description of the person's right under this subchapter to repurchase the property.

SECTION \_\_\_\_\_. Not later than January 1, 2009, the comptroller shall:

(1) identify all public and private entities with eminent domain authority; and

(2) make recommendations to the legislature and the governor regarding:

(A) which entities have, need, or should have eminent domain authority;

(B) whether that eminent domain authority of those entities should be continued, expanded, or limited; and

(C) the cause and effect of continuing, eliminating, expanding, or limiting the eminent domain authority of those entities.

**Senate Amendment No. 3 (Senate Floor Amendment No. 4)**

Amend **HB 2006** (Senate committee printing) in SECTION 2 of the bill, immediately following added Section 2206.051, Government Code (page 5, between line 26-27), by adding the following:

Sec. 2206.052. LIMITATIONS ON EASEMENTS. (a) A property owner whose property is acquired through the use of eminent domain under Chapter 21, Property Code, for the purpose of creating an easement through that owner's property may construct streets or roads, including a gravel, asphalt, or concrete road, at any locations above the easement that the property owner chooses.

(b) The portion of a road constructed under this section that is over the easement may not exceed 40 feet in width.

**Senate Amendment No. 4 (Senate Floor Amendment No. 6)**

Amend **HB 2006** (House committee report), as follows:

(1) On page 8, between lines 14 and 15, insert the following:

SECTION 8. Section 21.042, Property Code, is amended to read as follows:

(e) If a portion of a tract or parcel of real property is condemned for the use, construction, operation, or maintenance of the state highway system or of a county toll project described by Chapter 284, Transportation Code, that is eligible for designation as part of the state highway system, the special commissioners shall consider any diminished access to the highway and to or from the remaining property to the extent that it affects the present market value of the real property, including any factors considered when determining actual fair market value of property for ad valorem tax purposes [or for the use, construction, development, operation, or maintenance of an improvement or project by a metropolitan rapid transit authority created before January 1, 1980, with a principal municipality having a population of less than 1.9 million and established under Chapter 451, Transportation Code, the special commissioners shall determine the damage to the property owner regardless of whether the property owner makes a claim for damages to the remaining property. In awarding compensation or assessing the damages, the special commissioners shall consider any special and direct benefits that arise from the highway improvement or the transit authority improvement or project that are peculiar to the property owner and that relate to the property owner's ownership, use, or enjoyment of the particular parcel of remaining real property].

(2) Renumber subsequent sections accordingly.

**HR 2612 - READ  
(by Hernandez)**

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

**HR 2612**, Commending all the participants in the Texas Legislative Internship Program during the 80th Legislative Session.

**HR 2851 - ADOPTED**  
**(by Swinford)**

The following privileged resolution was laid before the house:

**HR 2851**

BE IT RESOLVED by the House of Representatives of the State of Texas, 80th Legislature, Regular Session, 2007, 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 1090**, relating to the establishment of a program by the Department of Agriculture to make grants to encourage the construction of facilities that generate electric energy with certain types of agricultural residues, waste, debris, or crops and to the state's goal for generating renewable energy, to consider and take action on the following matter:

House Rule 13, Sections 9(a)(3) and (4), are suspended to permit the committee to add the following section to the bill:

SECTION 2. Section 39.904, Utilities Code, is amended by amending Subsection (m) and adding Subsections (m-1), (m-2), (m-3), and (o) to read as follows:

(m) A renewable energy credit retired for purposes other than to meet the requirements of Subsection (c)(1) may not affect the minimum annual renewable energy requirement under Subsection (c)(1) for a retail electric provider, municipally owned utility, or electric cooperative.

(m-1) As provided by this subsection, the commission shall reduce the requirement under Subsection (c)(1) for a retail electric provider, municipally owned utility, or electric cooperative that is subject to a renewable energy requirement under this section and that serves a customer receiving electric service at transmission-level voltage if, before any year for which the commission calculates renewable energy requirements under Subsection (c)(1), the customer notifies the commission in writing that the customer chooses not to support the goal for renewable energy generation under this section for that year. The commission shall exclude from the calculation of a retail electric provider's, municipally owned utility's, or electric cooperative's requirement under Subsection (c)(1) energy sold by the retail electric provider, municipally owned utility, or electric cooperative at transmission-level voltage to customers who have submitted the notice to the commission under this subsection for the applicable year.

(m-2) The commission shall determine the reporting requirements and schedule necessary to implement Subsections (m) and (m-1).

(m-3) Subsections (m), (m-1), and (m-2) do not alter the renewable energy goals or targets established in Subsection (a) or reduce the minimum statewide renewable energy requirements of Subsection (c)(1) [~~Notwithstanding any other provision of law, the commission shall ensure that all renewable capacity installed in this state and all renewable energy credits awarded, produced, procured, or sold from renewable capacity in this state are counted toward the goal in Subsection (a)].~~

(o) The commission may establish an alternative compliance payment. An entity that has a renewable energy purchase requirement under this section may elect to pay the alternative compliance payment instead of applying renewable energy credits toward the satisfaction of the entity's obligation under this section. The commission may establish a separate alternative compliance payment for the goal of 500 megawatts of capacity from renewable energy technologies other than wind energy. The alternative compliance payment for a renewable energy purchase requirement that could be satisfied with a renewable energy credit from wind energy may not be less than \$2.50 per credit or greater than \$20 per credit. Prior to September 1, 2009, an alternative compliance payment under this subsection may not be set above \$5 per credit. In implementing this subsection, the commission shall consider:

(1) the effect of renewable energy credit prices on retail competition;

(2) the effect of renewable energy credit prices on electric rates;

(3) the effect of the alternative compliance payment level on the renewable energy credit market; and

(4) any other factors necessary to ensure the continued development of the renewable energy industry in this state while protecting ratepayers from unnecessary rate increases.

Explanation: The addition of the amendment to Section 39.904, Utilities Code, is necessary to clarify that a renewable energy credit retired for purposes other than to meet the state goal for renewable energy does not count toward that goal, to authorize a customer of certain retail electric providers, municipally owned utilities, or electric cooperatives to choose not to support the goal for renewable energy generation, and to authorize an alternative compliance payment by which an entity that has a renewable energy purchase requirement may satisfy that obligation.

House Rule 13, Sections 9(a)(3) and (4), are suspended to permit the committee to add the following section to the bill:

SECTION 4. (a) The Public Utility Commission of Texas shall conduct a study of the effect that Section 39.904, Utilities Code, has had on:

(1) market power in this state; and

(2) the rates paid for electricity by residential customers in this state.

(b) Not later than January 1, 2009, the Public Utility Commission of Texas shall prepare and present to the governor, lieutenant governor, and speaker of the house of representatives a report describing the results of the study that specifies any changes in market power and any costs to or savings for residential customers because of the implementation of Section 39.904, Utilities Code.

Explanation: The addition of the requirement that the Public Utility Commission of Texas conduct a study and prepare and present a report is necessary to provide information to the governor, lieutenant governor, and speaker of the house of representatives regarding the effects of the implementation of Section 39.904, Utilities Code.

**HR 2851** was adopted.

**HB 1090 - ADOPTION OF CONFERENCE COMMITTEE REPORT**

Representative Swinford submitted the following conference committee report on **HB 1090**:

Austin, Texas, May 25, 2007

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 1090** 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	Swinford
Brimer	Hopson
Harris	P. King
Averitt	Heflin
Lucio	Christian
On the part of the senate	On the part of the house

**HB 1090**, A bill to be entitled An Act relating to the establishment of a program by the Department of Agriculture to make grants to encourage the construction of facilities that generate electric energy with certain types of agricultural residues, waste, debris, or crops and to the state's goal for generating renewable energy.

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

SECTION 1. Title 2, Agriculture Code, is amended by adding Chapter 22 to read as follows:

**CHAPTER 22. AGRICULTURAL BIOMASS AND LANDFILL DIVERSION  
INCENTIVE PROGRAM**

Sec. 22.001. POLICY AND PURPOSE. It is the policy of this state and the purpose of this chapter to reduce air pollution, improve air quality, protect public health, help this state diversify its energy supply, and divert waste from landfills through new price-support incentives to encourage the construction of facilities to generate electric energy with certain types of agricultural residues, forest wood waste, urban wood waste, storm-generated biomass debris, and energy-dedicated crops.

Sec. 22.002. DEFINITIONS. In this chapter:

(1) "Diverter":

(A) means:

(i) a person or facility that qualifies for an exemption under Section 361.111 or 363.006, Health and Safety Code;

(ii) a handler of nonhazardous industrial waste that is registered or permitted under Chapter 361, Health and Safety Code; or

(iii) a facility that separates recyclable materials from a municipal solid waste stream and that is registered or permitted under Chapter 363, Health and Safety Code, as a municipal solid waste management facility; and

(B) does not include a facility that uses biomass to generate electric energy.

(2) "Farmer" means the owner or operator of an agricultural facility that produces qualified agricultural biomass.

(3) "Forest wood waste" includes residual tops and limbs of trees, unused cull trees, pre-commercial thinnings, and wood or debris from noncommercial tree species, slash, or brush.

(4) "Logger" means a harvester of forest wood waste, regardless of whether the harvesting occurs as a part of the harvesting of merchantable timber.

(5) "Qualified agricultural biomass" means:

(A) agricultural residues that are of a type that historically have been disposed of in a landfill, relocated from their point of origin and stored in a manner not intended to enhance or restore the soil, burned in open fields in the area from which they are derived, or burned in fields and orchards that continue to be used for the production of agricultural goods, and includes:

(i) field or seed crop residues, including straw from rice or wheat;

(ii) fruit or nut crop residues, including orchard or vineyard prunings and removals;

(iii) forest wood waste or urban wood waste; and

(iv) agricultural livestock waste nutrients; and

(B) a crop grown and used specifically for its energy generation value, including a crop consisting of a fast-growing tree species.

(6) "Storm-generated biomass debris" means biomass-based residues that result from a natural weather event, including a hurricane, tornado, or flood, that would otherwise be disposed of in a landfill or burned in the open. The term includes:

(A) trees, brush, and other vegetative matter that have been damaged or felled by severe weather but that would not otherwise qualify as forest wood waste; and

(B) clean solid wood waste that has been damaged by severe weather but that would not otherwise qualify as urban wood waste.

(7) "Urban wood waste" means:

(A) solid wood waste material, other than pressure-treated, chemically treated, or painted wood waste, that is free of rubber, plastic, glass, nails, or other inorganic material; and

(B) landscape or right-of-way trimmings.

Sec. 22.003. GRANT PROGRAM. (a) The department shall develop and administer an agricultural biomass and landfill diversion incentive program to make grants to farmers, loggers, and diverters who provide qualified agricultural

biomass, forest wood waste, urban wood waste, or storm-generated biomass debris to facilities that use biomass to generate electric energy in order to provide an incentive for the construction of facilities for that purpose and to:

- (1) promote economic development;
- (2) encourage the use of renewable sources in the generation of electric energy;
- (3) reduce air pollution caused by burning agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris in open fields;  
and
- (4) divert waste from landfills.

(b) Subject to Section 22.005, a farmer, logger, or diverter is entitled to receive a grant in the amount of \$20 for each bone-dry ton of qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris provided by the farmer, logger, or diverter in a form suitable for generating electric energy to a facility that:

- (1) is located in this state;
- (2) was placed in service after August 31, 2009;
- (3) generates electric energy sold to a third party by using qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris;
- (4) uses the best available emissions control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the air contaminant emissions resulting from the facility;
- (5) maintains its emissions control equipment in good working order;

and

(6) is in compliance with its operating permit issued by the Texas Commission on Environmental Quality under Chapter 382, Health and Safety Code.

(c) The commissioner by rule may authorize a grant to be made for providing each bone-dry ton of a type or source of qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris in an amount that is greater than the amount provided by Subsection (b) if the commissioner determines that a grant in a greater amount is necessary to provide an adequate incentive to use that type or source of qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris to generate electric energy.

(d) The Public Utility Commission of Texas and the Texas Commission on Environmental Quality shall assist the department as necessary to enable the department to determine whether a facility meets the requirements of Subsection (b) for purposes of the eligibility of farmers, loggers, and diverters for grants under this chapter.

(e) To receive a grant under this chapter, a farmer, logger, or diverter must deliver qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris to a facility described by Subsection (b). The operator of each facility described by that subsection shall:

(1) verify and document the amount of qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris delivered to the facility for the generation of electric energy; and

(2) make a grant on behalf of the department in the appropriate amount to each farmer, logger, or diverter who delivers qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris to the facility.

(f) The department quarterly shall reimburse each operator of a facility described by Subsection (b) for grants under this chapter made by the operator during the preceding quarter to eligible farmers, loggers, and diverters. To receive reimbursement for one or more grants, an operator of a facility described by that subsection must file an application with the department that verifies the amount of the grants made by the operator during the preceding quarter for which the operator seeks reimbursement.

(g) The department may contract with and provide for the compensation of private consultants, contractors, and other persons to assist the department in administering the agricultural biomass and landfill diversion incentive program.

Sec. 22.004. AGRICULTURAL BIOMASS AND LANDFILL DIVERSION INCENTIVE PROGRAM ACCOUNT. (a) The agricultural biomass and landfill diversion incentive program account is an account in the general revenue fund. The account is composed of:

(1) legislative appropriations;

(2) gifts, grants, donations, and matching funds received under Subsection (b); and

(3) other money required by law to be deposited in the account.

(b) The department may solicit and accept gifts in kind, donations, and grants of money from the federal government, local governments, private corporations, or other persons to be used for the purposes of this chapter.

(c) Money in the account may be appropriated only to the department for the purpose of implementing and maintaining the agricultural biomass and landfill diversion incentive program.

(d) Income from money in the account shall be credited to the account.

(e) The account is exempt from the application of Section 403.095, Government Code.

Sec. 22.005. LIMITATION ON GRANT AMOUNT. (a) The total amount of grants awarded by operators of facilities under Section 22.003 and by the department under Section 22.006 during each state fiscal year may not exceed \$30 million.

(b) During each state fiscal year, the department may not pay to an operator of a facility as reimbursements under Section 22.003 or grants under Section 22.006 an amount that exceeds \$6 million.

Sec. 22.006. ELIGIBILITY OF OPERATORS OF ELECTRIC ENERGY GENERATION FACILITIES FOR GRANTS. (a) Except as provided by Subsection (b), an operator of a facility that uses biomass to generate electric energy is not eligible to receive a grant under this chapter or under any other state

law for the generation of electric energy with qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris for which a farmer, logger, or diverter has received a grant under this chapter.

(b) An operator of a facility that uses biomass to generate electric energy may receive a grant from the department under this chapter for generating electric energy with qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris that arrives at the facility in a form unsuitable for generating electric energy and that the facility processes into a form suitable for generating electric energy.

(c) To receive a grant from the department under Subsection (b), an operator of a facility must file an application with the department that verifies the amount of qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris that the facility processed into a form suitable for generating electric energy. The department shall make grants to eligible operators of facilities quarterly, subject to appropriations. The provisions of this chapter governing grants to farmers, loggers, and diverters, including the provisions governing the amount of a grant, apply to a grant from the department under Subsection (b) to the extent they can be made applicable.

Sec. 22.007. RULES. The commissioner, in consultation with the Public Utility Commission of Texas and the Texas Commission on Environmental Quality, shall adopt rules to implement this chapter.

Sec. 22.008. AVAILABILITY OF FUNDS. Notwithstanding any other provision of this chapter, the department is not required to administer this chapter or adopt rules under this chapter, and the operator of a facility described by Section 22.003(b) is not required to make a grant on behalf of the department, until funds are appropriated for those purposes.

Sec. 22.009. EXPIRATION OF PROGRAM AND CHAPTER. The agricultural biomass and landfill diversion incentive program terminates on August 31, 2019. On September 1, 2019:

(1) any unobligated funds remaining in the agricultural biomass and landfill diversion incentive program account shall be transferred to the undedicated portion of the general revenue fund; and

(2) this chapter expires.

SECTION 2. Section 39.904, Utilities Code, is amended by amending Subsection (m) and adding Subsections (m-1), (m-2), (m-3), and (o) to read as follows:

(m) A renewable energy credit retired for purposes other than to meet the requirements of Subsection (c)(1) may not affect the minimum annual renewable energy requirement under Subsection (c)(1) for a retail electric provider, municipally owned utility, or electric cooperative.

(m-1) As provided by this subsection, the commission shall reduce the requirement under Subsection (c)(1) for a retail electric provider, municipally owned utility, or electric cooperative that is subject to a renewable energy requirement under this section and that serves a customer receiving electric service at transmission-level voltage if, before any year for which the commission calculates renewable energy requirements under Subsection (c)(1), the customer

notifies the commission in writing that the customer chooses not to support the goal for renewable energy generation under this section for that year. The commission shall exclude from the calculation of a retail electric provider's, municipally owned utility's, or electric cooperative's requirement under Subsection (c)(1) energy sold by the retail electric provider, municipally owned utility, or electric cooperative at transmission-level voltage to customers who have submitted the notice to the commission under this subsection for the applicable year.

(m-2) The commission shall determine the reporting requirements and schedule necessary to implement Subsections (m) and (m-1).

(m-3) Subsections (m), (m-1), and (m-2) do not alter the renewable energy goals or targets established in Subsection (a) or reduce the minimum statewide renewable energy requirements of Subsection (c)(1) [Notwithstanding any other provision of law, the commission shall ensure that all renewable capacity installed in this state and all renewable energy credits awarded, produced, procured, or sold from renewable capacity in this state are counted toward the goal in Subsection (a)].

(o) The commission may establish an alternative compliance payment. An entity that has a renewable energy purchase requirement under this section may elect to pay the alternative compliance payment instead of applying renewable energy credits toward the satisfaction of the entity's obligation under this section. The commission may establish a separate alternative compliance payment for the goal of 500 megawatts of capacity from renewable energy technologies other than wind energy. The alternative compliance payment for a renewable energy purchase requirement that could be satisfied with a renewable energy credit from wind energy may not be less than \$2.50 per credit or greater than \$20 per credit. Prior to September 1, 2009, an alternative compliance payment under this subsection may not be set above \$5 per credit. In implementing this subsection, the commission shall consider:

(1) the effect of renewable energy credit prices on retail competition;  
(2) the effect of renewable energy credit prices on electric rates;  
(3) the effect of the alternative compliance payment level on the renewable energy credit market; and

(4) any other factors necessary to ensure the continued development of the renewable energy industry in this state while protecting ratepayers from unnecessary rate increases.

SECTION 3. (a) The commissioner of agriculture, in consultation with the Texas Forest Service, shall conduct a study to determine the volume of wood waste in the East Texas and Central Texas forest regions of this state.

(b) Not later than January 1, 2009, the commissioner of agriculture shall prepare and present to the governor, the lieutenant governor, the speaker of the house of representatives, and each member of the legislature a report describing the results of the study.

SECTION 4. (a) The Public Utility Commission of Texas shall conduct a study of the effect that Section 39.904, Utilities Code, has had on:

(1) market power in this state; and

(2) the rates paid for electricity by residential customers in this state.

(b) Not later than January 1, 2009, the Public Utility Commission of Texas shall prepare and present to the governor, lieutenant governor, and speaker of the house of representatives a report describing the results of the study that specifies any changes in market power and any costs to or savings for residential customers because of the implementation of Section 39.904, Utilities Code.

SECTION 5. This Act takes effect September 1, 2007.

Representative Swinford moved to adopt the conference committee report on **HB 1090**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1090** prevailed by (Record 1893): 139 Yeas, 4 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Berman; Bohac; Bolton; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Heflin; Hernandez; Herrero; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Paxton; Peña; Phillips; Pickett; Pierson; Pitts; Puente; Quintanilla; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

Nays — Bonnen; Hartnett; Hilderbran; Raymond.

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

Absent, Excused — Bailey; Harless.

Absent — King, S.; Patrick; Straus.

#### STATEMENTS OF VOTE

I was shown voting no on Record No. 1893. I intended to vote yes.

Hilderbran

When Record No. 1893 was taken, my vote failed to register. I would have voted yes.

S. King

When Record No. 1893 was taken, I was in the house but away from my desk. I would have voted yes.

Patrick

**HB 2096 - ADOPTION OF CONFERENCE COMMITTEE REPORT**

Representative Quintanilla submitted the following conference committee report on **HB 2096**:

Austin, Texas, May 24, 2007

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 2096** 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.

Uresti

Hinojosa

Lucio

Shapleigh

Zaffirini

On the part of the senate

Quintanilla

T. King

Lucio

Peña

Pickett

On the part of the house

**HB 2096**, A bill to be entitled An Act relating to utility connections on certain tracts of property in certain counties near an international border.

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

SECTION 1. Section 232.029, Local Government Code, is amended by amending Subsection (b) and adding Subsections (k), (l), and (m) to read as follows:

(b) Except as provided by Subsections [Subsection] (c) and (k) or Section 232.037(c), a utility may not serve or connect any subdivided land with electricity or gas unless the entity receives a determination from the county commissioners court under Section 232.028(b)(2) that adequate water and sewer services have been installed to service the subdivision.

(k) Subject to Subsections (l) and (m), a utility that does not hold a certificate issued by, or has not received a determination from, the commissioners court under Section 232.028 to serve or connect subdivided property with electricity or gas may provide that service to a single-family residential dwelling on that property if:

(1) the person requesting utility service:

(A) is the owner and occupant of the residential dwelling; and

(B) on or before January 1, 2001, owned and occupied the

residential dwelling;

(2) the utility previously provided the utility service on or before January 1, 2001, to the property for the person requesting the service;

(3) the utility service provided as described by Subdivision (2) was terminated not earlier than five years before the date on which the person requesting utility service submits an application for that service; and

(4) providing the utility service will not result in:

(A) an increase in the volume of utility service provided to the property; or

(B) more than one utility connection for each single-family residential dwelling located on the property.

(l) A utility may provide service under Subsection (k) only if the person requesting the service provides to the commissioners court documentation that evidences compliance with the requirements of Subsection (k) and that is satisfactory to the commissioners court.

(m) A utility may not serve or connect subdivided property as described by Subsection (k) if, on or after September 1, 2007, any existing improvements on that property are modified.

SECTION 2. This Act takes effect September 1, 2007.

Representative Quintanilla moved to adopt the conference committee report on **HB 2096**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 2096** prevailed by (Record 1894): 142 Yeas, 1 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Miles; Miller; Moreno; Morrison; Mowery; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

Nays — Howard, C.

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

Absent, Excused — Bailey; Harless.

Absent — Harper-Brown; Merritt; Murphy.

**HB 1973 - ADOPTION OF CONFERENCE COMMITTEE REPORT**

Representative Delisi submitted the following conference committee report on **HB 1973** :

Austin, Texas, May 25, 2007

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 1973** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Janek

Uresti

Nichols

Deuell

Nelson

On the part of the senate

Hopson

McReynolds

Truitt

Zerwas

Delisi

On the part of the house

**HB 1973**, A bill to be entitled An Act relating to certain duties of the Texas Medical Board in licensing and expert testimony.

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

SECTION 1. Subchapter A, Chapter 153, Occupations Code, is amended by adding Section 153.016 to read as follows:

Sec. 153.016. EXPERT TESTIMONY. A member of the board may not serve as an expert witness in a suit involving a health care liability claim against a physician for injury to or death of a patient.

SECTION 2. Section 155.007, Occupations Code, is amended by adding Subsections (h), (i), (j), (k), (l), (m), and (n) to read as follows:

(h) Not later than January 1 of each year:

(1) the executive director shall review the policy and procedures the board uses to issue licenses; and

(2) the board shall perform a needs assessment to enable the board to determine the performance goals that the board must meet to reduce any unreasonable delays in the timely completion of the licensing process and to ensure the process is completed in a reasonable number of days.

(i) Not later than August 1 of each even-numbered year, the executive director shall issue a report to the governor, the Legislative Budget Board, and the relevant committees of the senate and the house of representatives on the state of the board's licensing process.

(j) The report required under Subsection (i) must include a projected yearly budget for board staffing and technology improvements that will allow the board to issue licenses within a reasonable number of days.

(k) The board and the executive director shall ensure that any change in licensing policies or procedures is made only to increase the number of licenses issued under this chapter, reduce unreasonable delays in the licensing process, and maintain public safety.

(l) The report required under Subsection (i) must include:

(1) any specialty certification information collected from applicants, including any information similar to information collected under Section 154.006;

(2) the location where each applicant intends to practice; and

(3) in aggregate form, data collected since the prior report relating to felony convictions, Class A and Class B misdemeanor convictions, and deferred adjudications for felonies and Class A and Class B misdemeanors.

(m) Not later than August 31, 2008, the board shall ensure that the average time to process license applications under this chapter does not exceed 51 days. The board shall include the board's progress toward this performance measure target in the report required under Subsection (i).

(n) The board shall make an effort to give priority to an application submitted by an applicant who informs the board that the applicant intends to practice in a medically underserved area of this state.

SECTION 3. Section 155.008, Occupations Code, is amended to read as follows:

Sec. 155.008. CRIMINAL RECORD CHECK. (a) The board may submit to the Department of Public Safety a complete set of fingerprints of each license applicant, and the department shall classify and check the fingerprints against those in the department's fingerprint records. The department shall certify to the board its findings regarding the criminal record of the applicant or the applicant's lack of a criminal record.

(b) Each applicant shall submit information to the board detailing any conviction for a felony or a Class A or Class B misdemeanor or a deferred adjudication for a felony or Class A or Class B misdemeanor for a violation relating to:

(1) Medicare, Medicaid or insurance fraud;

(2) the Texas Controlled Substances Act or intoxication or alcoholic beverage offenses;

(3) sexual or assaultive offenses; and

(4) tax fraud or evasion.

SECTION 4. Section 156.001, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) In addition to the information required by Subsection (c), a license holder shall submit to the board with the registration permit renewal application information not reported on a license application or a previous permit renewal application relating to a felony conviction, a conviction for a Class A or Class B misdemeanor, or a deferred adjudication for a felony offense or Class A or Class B misdemeanor offense for:

(1) Medicare, Medicaid or insurance fraud;

- (2) the Texas Controlled Substances Act or intoxication or alcoholic beverage offenses;  
(3) sexual or assaultive offenses; and  
(4) tax fraud or evasion.

SECTION 5. Section 155.1025(a), Occupations Code, is amended to read as follows:

(a) The board shall adopt rules for expediting any application for a license under this subtitle made by a person who [~~is licensed to practice medicine in another state or country and who~~] submits an affidavit with the application stating that:

(1) the applicant intends to practice in a rural community[~~— as determined by the Office of Rural Community Affairs~~]; or

(2) the applicant[~~—~~ (A) has requested and is eligible for an immigration visa waiver as described by Section 12.0127, Health and Safety Code; and

(B) intends to practice medicine in a medically underserved area or health professional shortage area, designated by the United States Department of Health and Human Services, that has a current shortage of physicians.

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, 2007.

Representative Delisi moved to adopt the conference committee report on **HB 1973**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1973** prevailed by (Record 1895): 143 Yeas, 1 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Berman; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pierson; Pitts; Puente; Quintanilla; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

Nays — Raymond.

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

Absent, Excused — Bailey; Harless.

Absent — Aycock; Bohac.

### STATEMENT OF VOTE

When Record No. 1895 was taken, my vote failed to register. I would have voted yes.

Aycock

### HB 1498 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hopson submitted the following conference committee report on **HB 1498**:

Austin, Texas, May 24, 2007

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 1498** 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

Deuell

Hegar

Hinojosa

Uresti

On the part of the senate

Hopson

Frost

McReynolds

Ritter

On the part of the house

**HB 1498**, A bill to be entitled An Act relating to the creation of the Panola County Groundwater Conservation District; providing authority to impose a tax and issue bonds.

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

SECTION 1. Subtitle H, Title 6, Special District Local Laws Code, is amended by adding Chapter 8819 to read as follows:

#### CHAPTER 8819. PANOLA COUNTY GROUNDWATER

#### CONSERVATION DISTRICT

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8819.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the district.

(2) "Director" means a member of the board.

(3) "District" means the Panola County Groundwater Conservation

District.

Sec. 8819.002. NATURE OF DISTRICT. The district is a groundwater conservation district in Panola County created under and essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

Sec. 8819.003. CONFIRMATION ELECTION REQUIRED. If the creation of the district is not confirmed at a confirmation election held on or before December 31, 2008, the district is dissolved on that date, except that:

- (1) any debts incurred shall be paid;
- (2) any assets that remain after the payment of debts shall be transferred to Panola County; and
- (3) the organization of the district shall be maintained until all debts are paid and remaining assets are transferred.

Sec. 8819.004. INITIAL DISTRICT TERRITORY. The initial boundaries of the district are coextensive with the boundaries of Panola County, Texas.

Sec. 8819.005. APPLICABILITY OF OTHER GROUNDWATER CONSERVATION DISTRICT LAW. Except as otherwise provided by this chapter, Chapter 36, Water Code, applies to the district.

[Sections 8819.006-8819.020 reserved for expansion]

SUBCHAPTER A-1. TEMPORARY PROVISIONS

Sec. 8819.021. APPOINTMENT OF TEMPORARY DIRECTORS. (a) Not later than the 45th day after the effective date of this chapter, nine temporary directors shall be appointed as follows:

(1) the Panola County Commissioners Court shall appoint eight temporary directors, with two of the temporary directors appointed from each of the four commissioners precincts in the county to represent the precincts in which the temporary directors reside; and

(2) the county judge of Panola County shall appoint one temporary director who resides in the district to represent the district at large.

(b) Of the temporary directors, at least one director must represent rural water suppliers in the district, one must represent agricultural interests in the district, and one must represent industrial interests in the district.

(c) If there is a vacancy on the temporary board of directors of the district, the Panola County Commissioners Court shall appoint a person to fill the vacancy in a manner that meets the representational requirements of this section.

(d) Temporary directors serve until the earlier of:

(1) the election of initial directors under Section 8819.023; or

(2) the date this subchapter expires under Section 8819.026.

Sec. 8819.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS. As soon as practicable after all the temporary directors have qualified under Section 36.055, Water Code, a majority of the temporary directors shall convene the organizational meeting of the district at a location within the district agreeable to a majority of the directors. If an agreement on location cannot be reached, the organizational meeting shall be at the Panola County Courthouse.

Sec. 8819.023. CONFIRMATION AND INITIAL DIRECTORS' ELECTION. (a) The temporary directors shall hold an election to confirm the creation of the district and to elect the initial directors of the district.

(b) The temporary directors shall have placed on the ballot the names of all candidates for an initial director's position who have filed an application for a place on the ballot as provided by Section 52.003, Election Code.

(c) The ballot must be printed to provide for voting for or against the proposition: "The creation of the Panola County Groundwater Conservation District."

(d) If the district levies a maintenance tax for payment of expenses, the ballot must be printed to provide for voting for or against the proposition: "The levy of a maintenance tax at a rate not to exceed \_\_\_\_ cents for each \$100 of assessed valuation."

(e) Section 41.001(a), Election Code, does not apply to an election held under this section.

(f) Except as provided by this section, an election under this section must be conducted as provided by Sections 36.017(b)-(i), Water Code, and the Election Code. The provision of Section 36.017(d), Water Code, relating to the election of permanent directors does not apply to an election under this section.

Sec. 8819.024. INITIAL DIRECTORS. (a) If creation of the district is confirmed at an election held under Section 8819.023, the initial directors of the district serve on the board of directors until permanent directors are elected under Section 8819.025 or 8819.053.

(b) The two initial directors representing each of the four commissioners precincts shall draw lots to determine which of the two directors shall serve a term expiring June 1 following the first regularly scheduled election of directors under Section 8819.025, and which of the two directors shall serve a term expiring June 1 following the second regularly scheduled election of directors. The at-large director shall serve a term expiring June 1 following the second regularly scheduled election of directors.

Sec. 8819.025. INITIAL ELECTION OF PERMANENT DIRECTORS. On the uniform election date prescribed by Section 41.001, Election Code, in May of the first even-numbered year after the year in which the district is authorized to be created at a confirmation election, an election shall be held in the district for the election of four directors to replace the initial directors who, under Section 8819.024(b), serve a term expiring June 1 following that election.

Sec. 8819.026. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2012.

[Sections 8819.027-8819.050 reserved for expansion]

#### SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8819.051. DIRECTORS; TERMS. (a) The district is governed by a board of nine directors.

(b) Directors serve staggered four-year terms, with four or five directors' terms expiring June 1 of each even-numbered year.

(c) A director may serve consecutive terms.

Sec. 8819.052. METHOD OF ELECTING DIRECTORS: COMMISSIONERS PRECINCTS. (a) The directors of the district shall be elected according to the commissioners precinct method as provided by this section.

(b) One director shall be elected by the voters of the entire district, and two directors shall be elected from each county commissioners precinct by the voters of that precinct.

(c) Except as provided by Subsection (e), 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.

(d) A person shall indicate on the application for a place on the ballot:

(1) the precinct that the person seeks to represent; or

(2) that the person seeks to represent the district at large.

(e) When the boundaries of the county commissioners precincts are redrawn after each federal decennial census to reflect population changes, a director in office on the effective date of the change, or a director elected or appointed before the effective date of the change whose term of office begins on or after the effective date of the change, shall serve in the precinct to which elected or appointed even though the change in boundaries places the person's residence outside the precinct for which the person was elected or appointed.

Sec. 8819.053. ELECTION DATE. The district shall hold an election to elect the appropriate number of directors on the uniform election date prescribed by Section 41.001, Election Code, in May of each even-numbered year.

Sec. 8819.054. COMPENSATION. (a) Sections 36.060(a), (b), and (d), Water Code, do not apply to the district.

(b) A director is entitled to receive compensation of not more than \$50 a day for each day the director actually spends performing the duties of a director. The compensation may not exceed \$3,000 a year.

(c) The board may authorize a director to receive reimbursement for the director's reasonable expenses incurred while engaging in activities on behalf of the board.

Sec. 8819.055. BOARD ACTION. A majority vote of a quorum is required for board action. If there is a tie vote, the proposed action fails.

[Sections 8819.056-8819.100 reserved for expansion]

#### SUBCHAPTER C. POWERS AND DUTIES

Sec. 8819.101. GENERAL POWERS. Except as otherwise provided by this chapter, the district has all of the rights, powers, privileges, functions, and duties provided by the general law of this state applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution.

Sec. 8819.102. GROUNDWATER WELLS UNDER RAILROAD COMMISSION JURISDICTION. (a) Except as provided by this section, a groundwater well drilled or operated within the district under a permit issued by the Railroad Commission of Texas is under the jurisdiction of the railroad commission, and, in respect to such a well, the district has only the authority provided by Chapter 36, Water Code.

(b) Groundwater produced in an amount authorized by a railroad commission permit may be used within or exported from the district without a permit from the district.

(c) To the extent groundwater is produced in excess of railroad commission authorization, the holder of the railroad commission permit:

(1) shall apply to the district for the appropriate permit for the excess production; and

(2) is subject to the applicable regulatory fees.

Sec. 8819.103. PROHIBITION ON DISTRICT PURCHASE, SALE, TRANSPORT, OR DISTRIBUTION OF WATER. The district may not purchase, sell, transport, or distribute surface water or groundwater for any purpose.

Sec. 8819.104. PROHIBITION ON DISTRICT USE OF EMINENT DOMAIN POWERS. The district may not exercise the power of eminent domain.

Sec. 8819.105. REGIONAL COOPERATION. (a) In this section, "designated groundwater management area" means an area designated as a groundwater management area under Section 35.004, Water Code.

(b) To provide for regional continuity, the district shall comply with the requirements of Section 36.108, Water Code, and:

(1) participate as needed in coordination meetings with other groundwater conservation districts in its designated groundwater management area;

(2) coordinate the collection of data with other groundwater conservation districts in its designated groundwater management area in such a way as to achieve relative uniformity of data type and quality;

(3) coordinate efforts to monitor water quality with other groundwater conservation districts in its designated groundwater management area, local governments, and state agencies;

(4) provide groundwater level data to other groundwater conservation districts in its designated groundwater management area;

(5) investigate any groundwater or aquifer pollution with the intention of locating its source;

(6) notify other groundwater conservation districts in its designated groundwater management area and all appropriate agencies of any groundwater pollution detected;

(7) annually provide to other groundwater conservation districts in its designated groundwater management area an inventory of water wells and an estimate of groundwater production in the district; and

(8) include other groundwater conservation districts in its designated groundwater management area on the mailing lists for district newsletters, seminars, public education events, news articles, and field days.

[Sections 8819.106-8819.150 reserved for expansion]

#### SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8819.151. LIMITATION ON TAXES. The district may not impose ad valorem taxes at a rate that exceeds 1.5 cents on each \$100 valuation of taxable property in the district.

Sec. 8819.152. FEES. (a) The board by rule may impose reasonable fees on each well:

(1) for which a permit is issued by the district; and

(2) that is not exempt from district regulation.

(b) A production fee may be based on:

- (1) the size of column pipe used by the well; or
- (2) the amount of water actually withdrawn from the well, or the amount authorized or anticipated to be withdrawn.

(c) The board shall base the initial production fee on the criteria listed in Subsection (b)(2). The initial production fee:

(1) may not exceed:

(A) 25 cents per acre-foot for water used for agricultural irrigation;

or

(B) 6.75 cents per thousand gallons for water used for any other purpose; and

(2) may be increased at a cumulative rate not to exceed three percent per year.

(d) In addition to the production fee authorized under this section, the district may assess an export fee on groundwater from a well that is produced for transport outside the district.

(e) Fees authorized by this section may be:

(1) assessed annually;

(2) used to pay the cost of district operations; and

(3) used for any other purpose allowed under Chapter 36, Water Code.

Sec. 8819.153. LIMITATION ON INDEBTEDNESS. The district may issue bonds and notes under Subchapter F, Chapter 36, Water Code, except that the total indebtedness created by that issuance may not exceed \$500,000 at any time.

SECTION 2. (a) The legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor has submitted the notice and Act to the Texas Commission on Environmental Quality.

(c) 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.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 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, 2007.

Representative Hopson moved to adopt the conference committee report on **HB 1498**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1498** prevailed by (Record 1896): 140 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Tourelles; Goolsby; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent, Excused — Bailey; Harless.

Absent — Coleman; Dunnam; Guillen; Martinez Fischer; Pickett; Veasey.

### **SB 759 - ADOPTION OF CONFERENCE COMMITTEE REPORT**

Representative Parker submitted the conference committee report on **SB 759**.

Representative Parker moved to adopt the conference committee report on **SB 759**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 759** prevailed by (Record 1897): 145 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Tourelles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day;

Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent, Excused — Bailey; Harless.

Absent — McReynolds.

**HR 2801 - ADOPTED**  
**(by B. Cook)**

The following privileged resolution was laid before the house:

**HR 2801**

BE IT RESOLVED by the House of Representatives of the State of Texas, 80th Legislature, Regular Session, 2007, 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 2458** (licensing and regulation of structural pest control by the Department of Agriculture and the abolition of the Texas Structural Pest Control Board) 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 SECTION to the bill:

SECTION 1.02. Subchapter A, Chapter 1951, Occupations Code, is amended by adding Section 1951.0021 to read as follows:

Sec. 1951.0021. STRUCTURAL PEST CONTROL SERVICE. The Structural Pest Control Service is a service of the department responsible for the regulation and licensing of persons engaged in the business of structural pest control. The service is established to provide exceptional customer service to the public and the industry, enhance the educational and professional standards of license holders, and ensure the health, safety, and welfare of the public.

Explanation: The change is necessary to establish the Structural Pest Control Service.

(2) House Rule 13, Sections 9(a)(3) and (4), are suspended to permit the committee to change the text of SECTION 1.30 of the bill by adding a new Subsection (h), Section 1951.254, Occupations Code, to read as follows:

(h) The department shall make available a consumer and industry telephone hotline to provide direct access to the Structural Pest Control Service to ensure timely and efficient assistance with industry and consumer needs.

Explanation: The change is necessary to establish a telephone hotline to provide access to the Structural Pest Control Service.

(3) House Rule 13, Sections 9(a)(3) and (4), are suspended to permit the committee to add the following SECTION to the bill:

SECTION 1.46. Subchapter G, Chapter 1951, Occupations Code, is amended by adding Section 1951.315 to read as follows:

Sec. 1951.315. CONTINUING EDUCATION REQUIREMENTS. The department shall administer a mandatory continuing education program for all license holders. Each license holder must comply with the continuing education requirements established by department rule in order to retain or renew a license.

Explanation: The change is necessary to provide for continuing education for structural pest control license holders.

**HR 2801** was adopted.

**HB 2458 - ADOPTION OF CONFERENCE COMMITTEE REPORT**

Representative B. Cook submitted the following conference committee report on **HB 2458**:

Austin, Texas, May 25, 2007

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 2458** 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  
Averitt  
Eltife  
Shapleigh  
Whitmire  
On the part of the senate

B. Cook  
Eissler  
Flynn  
Jones  
Ritter  
On the part of the house

**HB 2458**, A bill to be entitled An Act relating to the licensing and regulation of structural pest control by the Department of Agriculture and the abolition of the Texas Structural Pest Control Board.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
ARTICLE 1. CHANGES TO THE TEXAS STRUCTURAL PEST CONTROL  
ACT

SECTION 1.01. Section 1951.002, Occupations Code, is amended by amending Subdivision (14) and adding Subdivisions (5-a), (5-b), and (6-a) to read as follows:

(5-a) "Commissioner" means the commissioner of agriculture.

(5-b) "Committee" means the structural pest control advisory committee.

(6-a) "Department" means the Department of Agriculture.

(14) "State-limited-use pesticide" means a pesticide classified for restricted or limited use by the commissioner [of agriculture].

SECTION 1.02. Subchapter A, Chapter 1951, Occupations Code, is amended by adding Section 1951.0021 to read as follows:

Sec. 1951.0021. STRUCTURAL PEST CONTROL SERVICE. The Structural Pest Control Service is a service of the department responsible for the regulation and licensing of persons engaged in the business of structural pest control. The service is established to provide exceptional customer service to the public and the industry, enhance the educational and professional standards of license holders, and ensure the health, safety, and welfare of the public.

SECTION 1.03. Section 1951.053, Occupations Code, is amended to read as follows:

Sec. 1951.053. PERSON PERFORMING PEST CONTROL WORK OTHERWISE REGULATED BY DEPARTMENT ~~[OF AGRICULTURE]~~. (a) Except as provided by Sections 1951.212 and 1951.457(c), this chapter does not apply to:

(1) a person who performs pest control work on growing plants, trees, shrubs, grass, or other horticultural plants if the person:

(A) holds a florist or nursery registration certificate from the department ~~[Department of Agriculture]~~ under Section 71.043, Agriculture Code, other than a registration certificate that permits the sale, lease, or distribution of nursery products or floral items only at a temporary market; and

(B) holds a commercial or noncommercial applicator license from the department and issued under Chapter 76, Agriculture Code, ~~[Department of Agriculture]~~ that covers the pest control work; or

(2) a person who performs pest control work on growing plants, trees, shrubs, grass, or other horticultural plants or rights-of-way if the person:

(A) is employed by a political subdivision or a cemetery;

(B) is engaged in pest control work or vegetation management for the political subdivision or cemetery;

(C) holds a commercial or noncommercial applicator license from the department and issued under Chapter 76, Agriculture Code, ~~[Department of Agriculture]~~ that covers pest control work or is under the direct supervision of a person who holds a commercial or noncommercial applicator license from the department and issued under Chapter 76, Agriculture Code, ~~[Department of Agriculture]~~ that covers pest control work; and

(D) complies with annual continuing education required by the department ~~[Department of Agriculture]~~.

(b) A person described by Subsection (a) is not considered to be engaged in the business of structural pest control.

(c) Neither this section nor any other law shall prohibit a political subdivision from reducing the number of hours of training or other requirements for an employee conducting larval mosquito control on property owned or controlled by the political subdivision using biological pesticides approved for general use by the ~~[Texas]~~ Department of State Health Services, provided the employee is given instructions adequate to ensure the safe and effective use of such pesticides.

SECTION 1.04. Section 1951.055(a), Occupations Code, is amended to read as follows:

(a) Except as provided by Sections 1951.212 and 1951.457(c), this chapter does not apply to a person who uses pest control chemicals that are for household use and are available for purchase in retail food stores, such as aerosol bombs and spray cans, if the insecticide is used in accordance with the label directions on the insecticide or with department ~~[board]~~ rules or guidelines or as provided by Section 1951.303 and is:

(1) used by the owner of a building or the owner's employee or agent in an area occupied by the owner in a residential building; or

(2) used in a place that is vacant, unused, and unoccupied.

SECTION 1.05. Section 1951.056(a), Occupations Code, is amended to read as follows:

(a) Except as provided by Sections 1951.212 and 1951.457(c), this chapter does not apply to a person acting as a beekeeper, as defined by Section 131.001, Agriculture Code, who:

(1) is registered with the ~~[board and with the]~~ chief apiary inspector as provided by Subchapter C, Chapter 131, Agriculture Code;

(2) does not use pesticides or electrical devices other than conventional bee smokers or equipment as defined by Section 131.001, Agriculture Code; and

(3) collects, removes, or destroys honey bees ~~[not attached to a dwelling or structure occupied by the public].~~

SECTION 1.06. The heading to Subchapter C, Chapter 1951, Occupations Code, is amended to read as follows:

SUBCHAPTER C. [TEXAS] STRUCTURAL PEST CONTROL ADVISORY COMMITTEE ~~[BOARD]~~

SECTION 1.07. Section 1951.101, Occupations Code, is amended to read as follows:

Sec. 1951.101. COMMITTEE ~~[BOARD]~~ MEMBERSHIP. (a) The committee ~~[Texas Structural Pest Control Board]~~ consists of nine members appointed by the commissioner as follows:

(1) two members who are experts in structural pest control application;

(2) three members who represent the public;

(3) one member from an institution of higher education who is knowledgeable in the science of pests and pest control;

(4) one member who represents the interests of structural pest control operators and who is appointed based on recommendations provided by a trade association of operators;

(5) one member who represents the interests of consumers and who is appointed based on recommendations provided by consumer advocacy groups or associations; and

(6) the commissioner of state health services or the commissioner's designee.

(b) Members of the committee serve staggered four-year terms. The terms of four or five members, as appropriate, expire on February 1 of each odd-numbered year ~~[Six members are appointed by the governor with the advice and consent of the senate as follows:~~

(1) three members who:

~~[(A) have been engaged in the business of structural pest control for at least the five years preceding the date of appointment; and  
 (B) are not representatives of the same business entity; and  
 (2) three public members].~~

~~(c) Service on the committee by a state officer or employee is an additional duty of the member's office or employment [The commissioner of agriculture, the commissioner of public health, and the chair of the Department of Entomology at Texas A&M University or their designated representatives are also members of the board].~~

(d) Appointments to the committee ~~[board]~~ shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

SECTION 1.08. Section 1951.102, Occupations Code, is amended to read as follows:

Sec. 1951.102. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the committee [board] if:

- (1) the person is licensed under this chapter; or
- (2) the person or the person's spouse:

(A) is registered, certified, or licensed by an occupational regulatory agency in the field of pest control;

(B) is employed by or participates in the management of a business entity or other organization regulated by the department [board] or receiving funds from the department ~~[board]~~;

(C) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the department [board] or receiving funds from the department [board]; or

(D) uses or receives a substantial amount of tangible goods, services, or funds from the department [board], other than compensation or reimbursement authorized by law for committee [board] membership, attendance, or expenses.

SECTION 1.09. Section 1951.103, Occupations Code, is amended to read as follows:

Sec. 1951.103. MEMBERSHIP ~~[AND EMPLOYEE]~~ RESTRICTIONS. (a) In this section, "Texas trade association" means a ~~[nonprofit,] cooperative[;]~~ and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the committee if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of pest control except as provided by Section 1951.101(a)(4); or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of pest control ~~[An officer, employee, or paid consultant of a Texas trade association in the field of pest control may not be a member of the board and may not be an employee of the board who is exempt~~

~~from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule].~~

(c) ~~A person may not be a member of the committee if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department [who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of pest control may not be a member of the board and may not be an employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule].~~

~~[(d) A person may not serve as a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.]~~

SECTION 1.10. Section 1951.104, Occupations Code, is amended to read as follows:

Sec. 1951.104. DUTIES OF COMMITTEE ~~[TERMS]~~. The committee shall:

(1) gather and provide information relating to the practice of structural pest control at the request of the department or the commissioner; and

(2) advise the department and the commissioner on:

(A) the education and curricula requirements for applicants;

(B) the content of examinations under this chapter;

(C) proposed rules and standards on technical issues related to structural pest control and rules related to enforcement;

(D) standards and criteria for the issuance of licenses under this chapter;

(E) fees for license applications and examinations under this chapter; and

(F) other issues affecting the practice of structural pest control ~~[Appointed members of the board serve staggered six year terms, with the terms of one business and one public member expiring February 1 of each odd numbered year].~~

SECTION 1.11. Section 1951.105, Occupations Code, is amended to read as follows:

Sec. 1951.105. RULES GOVERNING COMMITTEE ~~[PRESIDING OFFICER]~~. The department shall adopt rules for the operation of the committee, including rules governing:

(1) the purpose, role, responsibility, and goals of the committee;

(2) the quorum requirements for the committee;

(3) the qualifications required for members of the committee, which may include experience and geographic representation requirements;

(4) the appointment process for the committee;

(5) the members' terms;

- (6) the training requirements;
- (7) a process to regularly evaluate the effectiveness of the committee;

and

(8) a requirement that the committee comply with Chapter 551, Government Code [The governor shall designate a member of the board as presiding officer. The presiding officer serves in that capacity at the pleasure of the governor].

SECTION 1.12. The heading to Section 1951.106, Occupations Code, is amended to read as follows:

Sec. 1951.106. APPLICABILITY OF OTHER LAW TO COMMITTEE [GROUNDS FOR REMOVAL].

SECTION 1.13. Section 1951.106(a), Occupations Code, is amended to read as follows:

(a) Section 2110.008, Government Code, does not apply to the committee [It is a ground for removal from the board that a member:

(1) does not have at the time of appointment the qualifications required by Section 1951.101 or 1951.102, as applicable;

(2) does not maintain during service on the board the qualifications required by Section 1951.101 or 1951.102, as applicable;

(3) violates a prohibition established by Section 1951.103;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled meetings of the board that the member is eligible to attend during a calendar year unless that absence is excused by a majority vote of the board].

SECTION 1.14. The heading to Subchapter E, Chapter 1951, Occupations Code, is amended to read as follows:

SUBCHAPTER E. [BOARD] POWERS AND DUTIES OF DEPARTMENT RELATING TO STRUCTURAL PEST CONTROL

SECTION 1.15. Section 1951.201, Occupations Code, is amended to read as follows:

Sec. 1951.201. SOLE LICENSING AUTHORITY; FEES. (a) The department [board] is the sole authority in this state for licensing persons engaged in the business of structural pest control.

(b) The department, with the advice of the committee, shall establish fees under this chapter in amounts reasonable and necessary to cover the costs of administering the department's programs and activities under this chapter.

SECTION 1.16. Section 1951.202, Occupations Code, is amended to read as follows:

Sec. 1951.202. BYLAWS. The department [board] shall adopt bylaws governing the conduct of the department's [boards] affairs under this chapter.

SECTION 1.17. Section 1951.203, Occupations Code, is amended to read as follows:

Sec. 1951.203. STANDARDS AND CRITERIA FOR LICENSES. The department, with the advice of the committee, [board] shall develop standards and criteria for issuing:

- (1) a structural pest control business license to a person engaged in the business of structural pest control;
- (2) a certified commercial applicator's license to an individual engaged in the business of structural pest control;
- (3) a certified noncommercial applicator's license to an individual; and
- (4) a technician license to an individual.

SECTION 1.18. Sections 1951.204(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) As part of an investigation under this chapter, the commissioner ~~[The board]~~ may request and, if necessary, compel by subpoena:

- (1) the attendance of witnesses for examination under oath; and
- (2) the production for inspection and copying of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter.

(b) The commissioner ~~[board]~~, acting through the attorney general, may bring an action to enforce a subpoena issued under Subsection (a) against a person who fails to comply with the subpoena.

(c) Venue for an action brought under Subsection (b) is in a district court in:

- (1) Travis County; or
- (2) the county in which the alleged violation occurred ~~[board may hold a hearing]~~.

SECTION 1.19. Section 1951.205, Occupations Code, is amended to read as follows:

Sec. 1951.205. ENVIRONMENTAL RULES. (a) The department, with the advice of the committee, [board] shall adopt rules governing the methods and practices of structural pest control that the department ~~[board]~~ determines are necessary to protect the public's health and welfare and prevent adverse effects on human life and the environment.

(b) A rule relating to the use of economic poisons must comply with applicable standards of the federal government and the commissioner ~~[of agriculture]~~ governing the use of such substances.

SECTION 1.20. Section 1951.206, Occupations Code, is amended to read as follows:

Sec. 1951.206. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) Except as provided by Subsection (b), the department ~~[board]~~ may not adopt a rule restricting advertising or competitive bidding by a person regulated by the department under this chapter ~~[board]~~.

(b) The department [board] may adopt rules restricting advertising or competitive bidding to prohibit false, misleading, or deceptive practices by a person regulated by the department under this chapter ~~[board]~~. A rule adopted under this subsection may not:

- (1) restrict the use of any medium for advertising;
- (2) restrict a person's personal appearance or use of a person's voice in an advertisement;
- (3) relate to the size or duration of an advertisement by a person; or
- (4) restrict a person's advertisement under a trade name.

SECTION 1.21. Section 1951.207, Occupations Code, is amended to read as follows:

Sec. 1951.207. INSPECTION OF LICENSE HOLDERS. (a) The department ~~[board]~~ by rule shall adopt a policy that:

(1) requires a business holding a structural pest control business license to be inspected by a field inspector at least once:

(A) in the business's first year of operation; and

(B) every four ~~[two]~~ years after the first year of operation;

(2) provides for additional inspections based on a schedule of risk-based inspections using the following criteria:

(A) the type and nature of the business;

(B) whether there has been a prior violation by the business;

(C) the inspection history of the business;

(D) any history of complaints involving the business; and

(E) any other factor determined by the department by rule ~~[initiating inspections more frequently than once every two years for a business or an applicator that has violated this chapter or a rule adopted under this chapter]; and~~

(3) provides that the department ~~[executive director]~~ may waive the inspection requirement on a case-by-case basis if an emergency arises or to accommodate complaint investigation schedules.

(b) The department ~~[board]~~ by rule shall adopt a policy and guidelines for conducting an investigation under this chapter, including:

(1) procedures for investigating a complaint concerning misuse of pesticides, including contamination by pesticides and human exposure to pesticides;

(2) the circumstances in which a case should be referred to the:

(A) ~~[Department of Agriculture;~~

~~[(B) Texas] Department of State Health Services;~~

(B) ~~[(C)] Texas Commission on Environmental Quality ~~[Natural Resource Conservation Commission]; or~~~~

(C) ~~[(D)] United States Environmental Protection Agency;~~

(3) recommendations to consumers and applicators regarding cleanup after a spill or misapplication; and

(4) procedures for residue sampling, including the circumstances in which to take a residue sample and the time in which the sample should be taken.

SECTION 1.22. Section 1951.208, Occupations Code, is amended to read as follows:

Sec. 1951.208. MISAPPLICATION OF PESTICIDES. (a) If an investigation shows that a misapplication of pesticides has occurred on the premises of a consumer, the department ~~[board]~~ shall immediately notify the consumer and the applicator of the misapplication.

(b) On a finding of misapplication, the department ~~[board]~~ shall keep records of health injuries and property damages resulting from the misapplication reported to the department ~~[board]~~ by a:

(1) certified applicator;

- (2) physician;
- (3) person holding a structural pest control business license;
- (4) technician;
- (5) consumer; or
- (6) state agency.

SECTION 1.23. Section 1951.209, Occupations Code, is amended to read as follows:

Sec. 1951.209. AVAILABILITY OF CERTAIN INFORMATION. The department [board] may make available to the ~~[Texas]~~ Department of State Health Services under the occupational condition reporting program established under Chapter 84, Health and Safety Code, any information the department [board] receives concerning an exposure to a pesticide caused by a person licensed under this chapter that results in a medically verifiable illness. The department [board] and the executive commissioner of the Health and Human Services Commission ~~[Texas Board of Health]~~ shall adopt joint rules for making that information available to the ~~[Texas]~~ Department of State Health Services. The rules must require the department [board] to make that information available to an institution of higher education that conducts research in urban entomology, epidemiology, or other areas related to structural pest control.

SECTION 1.24. Section 1951.210, Occupations Code, is amended to read as follows:

Sec. 1951.210. PRETREATMENT INSPECTION SERVICE; FEES; LIABILITY. (a) The department [board] may provide a pretreatment inspection service to consumers. A pretreatment inspection is limited to a determination of whether there is an infestation of pests on the premises inspected.

(b) On the request of a consumer, the department [board] may make available an inspector employed by the department [board] to inspect the premises of the consumer if the consumer has obtained, from at least two pest control companies:

- (1) a determination that there is an infestation of pests on the premises;
- and
- (2) an estimate of the cost of the treatment.

(c) The department [board] shall charge a fee for a pretreatment inspection in an amount sufficient to pay the cost of providing the service.

(d) The department [board] is not liable for any damages that may arise as a result of an inspection made under this section that is subsequently found to be incorrect.

SECTION 1.25. Section 1951.211, Occupations Code, is amended to read as follows:

Sec. 1951.211. CONSULTATION WITH INTEGRATED PEST MANAGEMENT TECHNIQUES EXPERT. The department [board] may contract with ~~[the Department of Agriculture or]~~ an institution of higher education for the services of an expert in integrated pest management to consult with the department [board], department [the board's] staff, license holders, and the public regarding integrated pest management techniques.

SECTION 1.26. Section 1951.212, Occupations Code, is amended to read as follows:

Sec. 1951.212. INTEGRATED PEST MANAGEMENT PROGRAMS FOR SCHOOL DISTRICTS. (a) The department ~~[board]~~ shall establish standards for an integrated pest management program for the use of pesticides, herbicides, and other chemical agents to control pests, rodents, insects, and weeds at the school buildings and other facilities of school districts.

(b) The department ~~[board]~~ shall use an existing advisory committee or create a new advisory committee to assist the department ~~[board]~~ in developing the standards for the integrated pest management program. In developing the standards, the advisory committee shall consult with a person knowledgeable in the area of integrated pest management in schools.

(c) The department ~~[board]~~ shall include in standards adopted under this section[-

~~(1) a requirement to use the least toxic methods available to control pests, rodents, insects, and weeds[-and~~

~~(2) a list of products that a school district is allowed to use in its applications].~~

(d) The department by rule shall establish categories of pesticides that a school district is allowed to apply. For each category, the department shall specify:

(1) the minimum distance a school district must maintain between an area where pesticides are being applied and an area where students are present at the time of application;

(2) the minimum amount of time a school district is required to wait before allowing students to enter an indoor or outdoor area in a school building or on school grounds for normal academic instruction or organized extracurricular activities after pesticides have been applied;

(3) the requirements for posting notice of the indoor and outdoor use of pesticides;

(4) the requirements for obtaining approval before applying the pesticide; and

(5) the requirements for maintaining records of the application of pesticides ~~[board shall require that a pesticide may be applied to a school building or on school grounds only when students are not expected to be present for normal academic instruction or organized extracurricular activities for at least 12 hours after the application].~~

(e) Each ~~[A]~~ school district shall:

(1) adopt an integrated pest management program that incorporates the standards established by the department ~~[board]~~ under this section;

(2) designate an integrated pest management coordinator for the district; and

(3) report to the department not later than the 90th day after the date the district designates or replaces an integrated pest management coordinator the name, address, telephone number, and e-mail address of the district's current coordinator.

(f) Each person who is designated as the integrated pest management coordinator for a school district shall successfully complete six hours of continuing education in integrated pest management every three years.

(g) The department shall inspect each school district at least once every five years for compliance with this section and may conduct additional inspections based on a schedule of risk-based inspections using the following criteria:

- (1) whether there has been a prior violation by the school district;
- (2) the inspection history of the school district;
- (3) any history of complaints involving the school district; and
- (4) any other factor determined by the department by rule.

SECTION 1.27. Section 1951.251, Occupations Code, is amended to read as follows:

Sec. 1951.251. PUBLIC INTEREST INFORMATION. (a) The department, with the advice of the committee, ~~[board]~~ shall prepare information of public interest describing the functions of the department under this chapter ~~[board]~~ and the procedures by which complaints are filed with and resolved by the department under this chapter ~~[board]~~.

(b) The department ~~[board]~~ shall make the information available to the public and appropriate state agencies.

SECTION 1.28. Section 1951.252, Occupations Code, is amended to read as follows:

Sec. 1951.252. COMPLAINTS. (a) The department ~~[board]~~ by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department ~~[board]~~ for the purpose of directing complaints to the department under this chapter ~~[board]~~. The department ~~[board]~~ may provide for that notice:

- (1) on each license form, application, or written contract for services of a person regulated under this chapter;
- (2) on a sign prominently displayed in the place of business of each person regulated under this chapter; or
- (3) in a bill for services provided by a person regulated under this chapter.

(b) The department ~~[board]~~ shall keep an information file about each complaint filed with the department under this chapter ~~[board]~~ that the department ~~[board]~~ has authority to resolve.

(c) If a written complaint is filed with the department under this chapter ~~[board]~~ that the department ~~[board]~~ has authority to resolve, the department ~~[board]~~, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(d) The department shall provide to a license holder against whom a complaint has been filed under this chapter:

- (1) the allegations made against the license holder in the complaint; and
- (2) on the license holder's request, any information obtained by the department in its investigation of the complaint.

(e) The department shall provide the information required under Subsection (d) in a timely manner to allow the license holder time to respond to the complaint.

(f) The commissioner may allow an authorized employee of the department to dismiss a complaint if an investigation demonstrates that:

(1) a violation did not occur; or

(2) the subject of the complaint is outside the department's jurisdiction under this chapter.

(g) An employee who dismisses a complaint under Subsection (f) shall report the dismissal to the commissioner. The report must include a sufficient explanation of the reason the complaint was dismissed.

SECTION 1.29. Section 1951.253, Occupations Code, is amended to read as follows:

Sec. 1951.253. PUBLIC PARTICIPATION. (a) The department ~~[board]~~ shall develop and implement policies that provide the public with a reasonable opportunity to appear before the committee ~~[board]~~ and to speak on any issue for which the committee has a duty under this chapter to advise the department ~~[under the board's jurisdiction].~~

(b) The department ~~[board]~~ shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability can be provided reasonable access to the department's ~~[board's]~~ programs under this chapter.

SECTION 1.30. Section 1951.254, Occupations Code, is amended to read as follows:

Sec. 1951.254. PUBLIC INFORMATION PROGRAM. (a) The department ~~[board]~~ shall establish a public information program as provided by this section and Sections 1951.453-1951.456 to inform the public about the practice and regulation of structural pest control.

(b) The department ~~[board]~~ may create a public information program advisory committee to assist in the development of a public information program.

(c) The department ~~[board]~~ shall make available to the public and other appropriate state agencies the information compiled as part of the program.

(d) The public information program must:

(1) include the adoption and distribution, in a manner that the department ~~[board]~~ considers appropriate, of a standard ~~[complaint]~~ form for ~~complaints~~ under this chapter; ~~and]~~

(2) inform prospective applicants for licensing under this chapter about the qualifications and requirements for licensing;

(3) inform applicants, license holders, and the public on the department's Internet website, in department brochures, and on any other available information resource about the department's enforcement process under this chapter, including each step in the complaint investigation and resolution process, from initial filing through final appeal; and

(4) inform license holders that a license holder may obtain information about a complaint made against the license holder and may obtain on request a copy of the complaint file.

(e) The department [board] shall develop a clear, factual, and balanced information sheet of one or more pages containing information on:

- (1) the pest control industry;
- (2) chemicals used in structural pest control;
- (3) general health and safety issues relating to structural pest control;
- (4) precautions to take before, during, and after application;
- (5) steps to take if a misapplication, including an underapplication or an overapplication, is suspected; and

(6) any other matters determined by the department [board].

(f) The information sheet must include:

(1) the names and telephone numbers of the ~~department [board, the Department of Agriculture,]~~ and the ~~[Texas]~~ Department of State Health Services;

(2) the telephone number of any pesticide hotline established by a state or federal agency or by a state university;

(3) a statement of a consumer's rights under Chapter 39, Business & Commerce Code, to cancel a home solicitation transaction; and

(4) information concerning the availability of any pretreatment inspection service that may be provided by the department [board] under Section 1951.210.

(g) The department [board] shall develop a sign to be posted in the area of an indoor treatment that contains:

(1) the date of the planned treatment; and

(2) any other information required by the department [board].

(h) The department shall make available a consumer and industry telephone hotline to provide direct access to the Structural Pest Control Service to ensure timely and efficient assistance with industry and consumer needs.

SECTION 1.31. Subchapter F, Chapter 1951, Occupations Code, is amended by adding Section 1951.255 to read as follows:

Sec. 1951.255. ENFORCEMENT INFORMATION. (a) The department shall make available to the public information about each final enforcement action taken by the department against a person under this chapter. The department shall provide this information on its Internet website and in other appropriate publications.

(b) The department may determine the format in which it will provide the information required under this section.

SECTION 1.32. Section 1951.301(b), Occupations Code, is amended to read as follows:

(b) A person may not engage in the business of structural pest control unless the person:

(1) meets the standards set by the department under this chapter [board]; and

(2) holds a structural pest control business license issued under this chapter.

SECTION 1.33. Section 1951.302, Occupations Code, is amended to read as follows:

Sec. 1951.302. CERTIFIED COMMERCIAL APPLICATOR'S LICENSE. The department [board] must determine that an individual is competent to use or supervise the use of a restricted-use pesticide or state-limited-use pesticide covered by the individual's certified commercial applicator's license.

SECTION 1.34. Section 1951.303(a), Occupations Code, is amended to read as follows:

(a) In this section, "incidental use situation" means a pesticide application, including treating wasps in an area adjacent to a utility meter, treating fire ants in a transformer box, or the treating of ants by a janitor or clerical employee in a break area, that:

(1) is on an occasional, isolated, site-specific basis;

(2) is incidental to the performance of a primary duty that is not pest control by an employee; and

(3) involves the use of general use pesticides after instruction, as provided by rules adopted by the department [board].

SECTION 1.35. Section 1951.304, Occupations Code, is amended to read as follows:

Sec. 1951.304. TECHNICIAN LICENSE. The department [board] may designate different classes or categories for technicians.

SECTION 1.36. Section 1951.305, Occupations Code, is amended to read as follows:

Sec. 1951.305. APPLICATION. (a) A person must apply for a license under this chapter on a form prescribed and provided by the department [board].

(b) Each applicant must provide the information the department [board] requires to determine the applicant's qualifications.

SECTION 1.37. Section 1951.306, Occupations Code, is amended to read as follows:

Sec. 1951.306. WAIVER FOR APPLICANT LICENSED IN ANOTHER STATE. (a) The department [board] may waive any license requirement under this chapter for an applicant who holds a license issued by another state that has license requirements substantially equivalent to those of this state.

(b) The department [board] may issue an endorsement of license to a person who:

(1) establishes residence in this state; and

(2) has been determined by the department [board] to meet the qualifications of a certified applicator by taking the appropriate examination in another state.

SECTION 1.38. Section 1951.307, Occupations Code, is amended to read as follows:

Sec. 1951.307. LICENSE RENEWAL. A person may renew a license by submitting an application to the department [board] and paying the required renewal fees.

SECTION 1.39. Section 1951.308(a), Occupations Code, is amended to read as follows:

(a) The department [board] by rule may adopt a system under which licenses expire on various dates during the year.

SECTION 1.40. Section 1951.309, Occupations Code, is amended to read as follows:

Sec. 1951.309. FEE FOR INITIAL OR RENEWAL LICENSE. (a) An applicant for an initial or renewal structural pest control business license or for an initial or renewal endorsement of license under Section 1951.306 must submit with the person's application a fee in an amount established by department rule for:

(1) a [~~fee of not more than \$180, as determined by the board, for each~~] license or endorsement; and

(2) [~~a fee of not more than \$84, as determined by the board, for~~] a license for each technician the applicant employs.

(b) An applicant for an initial or renewal certified applicator's license must deliver with the person's application a fee in an amount established by department rule for:

(1) a [~~fee of not more than \$112.50, as determined by the board, for each~~] license; and

(2) [~~a fee of not more than \$84, as determined by the board, for~~] a license for each technician the applicant employs.

SECTION 1.41. Section 1951.310, Occupations Code, is amended to read as follows:

Sec. 1951.310. LATE RENEWAL OF LICENSE. (a) The department [board] may retroactively renew a license issued under this chapter.

(b) If the person files a renewal application with the department [board] not later than the 30th day after the date the person's license expires, the person must pay a [~~late~~] renewal fee that is equal to 1-1/2 times the normally required renewal fee [~~of \$37.50~~].

(c) If the person files a renewal application with the department [board] later than the 30th day but not later than the 60th day after the date the person's license expires, the person must pay a [~~late~~] renewal fee that is equal to two times the normally required renewal fee [~~of \$75~~].

(d) A person who applies for a renewal license after the 60th day after the date the person's license expires must be reexamined by the department [board] to obtain a license.

SECTION 1.42. Section 1951.311, Occupations Code, is amended to read as follows:

Sec. 1951.311. REPLACEMENT LICENSE; FEE. The department [board] shall issue to a license holder whose license has been lost or destroyed or whose name has been changed a replacement license if the license holder submits to the department [board]:

(1) an appropriate application; and

(2) a fee in an amount established by department rule [~~of not more than \$30, as determined by the board~~].

SECTION 1.43. Sections 1951.312(a) through (d), Occupations Code, are amended to read as follows:

(a) The department [board] may not issue or renew a structural pest control business license until the license applicant:

(1) files with the department ~~[board]~~ a policy or contract of insurance, approved as sufficient by ~~the department [board]~~, in an amount not less than \$200,000 for bodily injury and property damage coverage, with a minimum total aggregate of \$300,000 for all occurrences, insuring the applicant against liability for damage to persons or property occurring as a result of operations performed in the course of the business of structural pest control on premises or any other property under the applicant's care, custody, or control;

(2) in the case of an applicant who has an unexpired and uncanceled insurance policy or contract on file with the department ~~[board]~~, files with the department ~~[board]~~ a certificate or other evidence from an insurance company stating that:

(A) the policy or contract insures the applicant against liability for acts and damage as described in Subdivision (1); and

(B) the amount of insurance coverage is in the amount approved by the department ~~[board]~~;

(3) files with the department ~~[board]~~ a bond, certificate of deposit, or other proof acceptable to the department ~~[board]~~ of sufficient funds in an amount not less than \$300,000 for payment of claims of damage to persons or property occurring as a result of operations performed negligently in the course of the business of structural pest control on premises or any other property under the applicant's care, custody, or control; or

(4) files with the department ~~[board]~~ evidence satisfactory to the department ~~[board]~~ of coverage under a general liability insurance policy, in an amount not less than \$200,000 for bodily injury and property damage coverage, with a minimum total aggregate of \$300,000 for all occurrences, if the applicant operates solely as a wood treater who treats wood on commercial property owned by the applicant.

(b) A structural pest control business license holder shall at all times maintain the insurance policy or contract or the security described by Subsection (a)(3) in the amount approved by the department ~~[board]~~. Failure to renew the policy or contract or maintain it or the security in the required amount is a ground for suspension or revocation of the license and a violation of this section.

(c) The department ~~[board]~~ by rule may require different amounts of insurance coverage for different classifications of operations under this chapter.

(d) The department ~~[board]~~ may adopt insurance requirements for certified noncommercial applicators or technicians.

SECTION 1.44. Section 1951.313, Occupations Code, is amended to read as follows:

Sec. 1951.313. MEMORANDUM OF AGREEMENT. The department ~~[board]~~ may enter into a memorandum of agreement with a political subdivision other than an institution of public or private education concerning licensing requirements.

SECTION 1.45. Section 1951.314, Occupations Code, is amended to read as follows:

Sec. 1951.314. LICENSE NOT TRANSFERABLE. A license issued by the department under this chapter ~~[board]~~ is not transferable.

SECTION 1.46. Subchapter G, Chapter 1951, Occupations Code, is amended by adding Section 1951.315 to read as follows:

Sec. 1951.315. CONTINUING EDUCATION REQUIREMENTS. The department shall administer a mandatory continuing education program for all license holders. Each license holder must comply with the continuing education requirements established by department rule in order to retain or renew a license.

SECTION 1.47. Section 1951.351, Occupations Code, is amended to read as follows:

Sec. 1951.351. TECHNICIAN TRAINING PROGRAM. (a) The department [board] shall:

(1) develop or approve a training program for licensed technicians and for applicants to become licensed technicians; and

(2) require that an applicant for a technician license complete the training program.

(b) The department [board] shall develop the educational and training materials for the training program with the Texas Agricultural Extension Service or any other institution of higher education. The department [board] shall publish and distribute, in conjunction with the Texas Agricultural Extension Service, the materials developed as a part of the training program.

(c) The training program must include instruction in:

(1) recognition of pests and pest damage;

(2) pesticide labels and label comprehension;

(3) pesticide safety;

(4) environmental protection;

(5) procedures for the immediate reporting of spills and misapplications;

(6) application equipment and techniques;

(7) pesticide formulations and actions;

(8) emergency procedures and pesticide cleanup;

(9) state and federal law relating to structural pest control;

(10) basic principles of mathematics, chemistry, toxicology, and entomology;

(11) nonchemical pest control techniques, including biological, mechanical, and prevention techniques; and

(12) any other topic the department [board] considers necessary.

(d) The department [board] may create a technician training program advisory committee to assist the department [board] in developing the training program required by this section.

(e) The department [board] may approve a training program that has not been developed by the department [board] if the program meets the standards adopted by the department [board] for the program. Completion of a training program approved by the department [board] under this subsection satisfies Subsection (a)(2).

SECTION 1.48. Section 1951.352, Occupations Code, is amended to read as follows:

Sec. 1951.352. NEW DEVELOPMENTS; PROOF OF STUDY. If the department [~~board~~] determines that new developments in pest control have occurred that are so significant that proper knowledge of the developments is necessary to protect the public, the department [~~board~~] may require of each applicant proof of study by:

- (1) attending approved training courses; or
- (2) taking additional examinations on the new developments only.

SECTION 1.49. Section 1951.353, Occupations Code, is amended to read as follows:

Sec. 1951.353. FEES RELATED TO TRAINING PROGRAMS. (a) The department [~~board~~] may charge a fee to a person to purchase or borrow materials developed for the technician training program under Section 1951.351. The department [~~board~~] shall set the fee in an amount that will recover the costs of the program.

(b) The department [~~board~~] may charge a fee in an amount established by rule [~~not to exceed \$75~~] for each course considered for approval under Section 1951.352.

SECTION 1.50. Section 1951.401, Occupations Code, is amended to read as follows:

Sec. 1951.401. EXAMINATION FOR CERTIFIED APPLICATOR'S LICENSE. The department [~~board~~] may require a person to qualify for a certified applicator's license by passing an examination demonstrating the person's competence in the field of structural pest control.

SECTION 1.51. Section 1951.402, Occupations Code, is amended to read as follows:

Sec. 1951.402. EXAMINATION FOR TECHNICIAN LICENSE. The department [~~board~~] shall require an applicant for a technician license to pass an examination developed and administered by the department [~~board~~] or a person designated by the department [~~board~~].

SECTION 1.52. Section 1951.403, Occupations Code, is amended to read as follows:

Sec. 1951.403. EXAMINATION FEE. Each time a person applies to take an examination for a license, the person shall pay the department [~~board~~] an examination fee [~~of not more than \$50~~], in an amount established [~~as determined~~] by [~~the~~] department rule [~~board~~], for each category of examination to be taken. Except as provided by department [~~board~~] rule, an examination fee is not refundable.

SECTION 1.53. Section 1951.404, Occupations Code, is amended to read as follows:

Sec. 1951.404. LIST OF STUDY MATERIALS AND SEMINARS. The department [~~board~~] shall make public a list of study materials and educational seminars that are available to help applicants successfully complete any examination administered under this chapter.

SECTION 1.54. Section 1951.405, Occupations Code, is amended to read as follows:

Sec. 1951.405. EXAMINATION RESULTS. (a) Not later than the 30th day after the date a licensing examination is administered under this chapter, the department [board] shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the department [board] shall notify each examinee of the results of the examination not later than the 14th day after the date the department [board] receives the results from the testing service.

(b) If notice of the results of an examination graded or reviewed by a national testing service will be delayed for more than 90 days after the examination date, the department [board] shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails a licensing examination administered under this chapter, the department [board] shall provide to the person an analysis of the person's performance on the examination.

SECTION 1.55. Subchapter I, Chapter 1951, Occupations Code, is amended by adding Section 1951.406 to read as follows:

Sec. 1951.406. EXAMINATION POLICY. (a) The department shall develop a written policy governing licensing examinations under this subchapter that prescribes:

- (1) procedures to improve the design and construction of examinations;
- (2) procedures for administering the examinations; and
- (3) the process for evaluating examinations in use.

(b) The policy must include:

(1) a procedure for seeking assistance in the development of examinations from experts in:

- (A) structural pest control;
- (B) structural pest control education; and
- (C) examination creation and validation;

(2) a schedule that provides for examination revision and maintenance, including the regular update of examinations;

(3) a procedure to routinely analyze and validate examinations;

(4) a procedure for the development of a bank of questions for each examination;

(5) guidelines for developing examinations from the bank of questions;

(6) the number and type of questions for each examination; and

(7) a requirement that the person responsible for examination development make periodic reports on examination issues to the commissioner.

SECTION 1.56. Section 1951.451, Occupations Code, is amended to read as follows:

Sec. 1951.451. CONTRACT FOR PEST CONTROL SERVICES. A written contract under which a license holder under this chapter agrees to perform structural pest control services in this state must include:

(1) the department's [board's] mailing address and telephone number; and

(2) a statement that the department [board] has jurisdiction over individuals licensed under this chapter.

SECTION 1.57. Section 1951.452, Occupations Code, is amended to read as follows:

Sec. 1951.452. RECORDS OF LICENSE HOLDER. (a) The department [board] may require each license holder to make records, as prescribed by the department [board], of the license holder's use of pesticides.

(b) Subject to Subsection (c), a record required under Subsection (a) shall be:

(1) maintained for at least two years on the license holder's business premises; and

(2) made available for inspection by the department [board] and its authorized agents during normal business hours.

(c) A certified noncommercial applicator shall maintain required records on the premises of the person's employer for at least two years. The records shall be made available for inspection by the department [board] and its authorized agents during the employer's normal operating hours.

SECTION 1.58. Sections 1951.456(a), (b), and (d), Occupations Code, are amended to read as follows:

(a) The department [board] shall develop a policy to implement and enforce Sections 1951.453-1951.455.

(b) Under rules adopted by the department [board], a requirement under Sections 1951.453-1951.455 that notice of a treatment be given at least 48 hours before the treatment may be waived for emergency treatments.

(d) For the purposes of Sections 1951.453-1951.455, a treatment is an indoor treatment even though the treatment may include an outside perimeter treatment of the building if the primary purpose of the treatment is to treat the inside of the building. The department [board] shall by rule define a perimeter treatment and shall adopt the definitions provided in federal law.

SECTION 1.59. Section 1951.457(c), Occupations Code, is amended to read as follows:

(c) The department [board] may adopt rules to require the distribution of a pest control information sheet for an outdoor treatment other than an outdoor treatment described by this section if the department [board] determines that the distribution or posting, or both, would protect the public's health, safety, and welfare.

SECTION 1.60. Section 1951.501, Occupations Code, is amended to read as follows:

Sec. 1951.501. DISCIPLINARY POWERS OF COMMISSIONER RELATING TO STRUCTURAL PEST CONTROL [~~BOARD~~]. (a) In this section, "parent company" means an individual or a partnership, corporation, or other business entity holding one or more structural pest control business licenses.

(b) On a determination that an applicant or structural pest control business license holder under a parent company has substantially failed to comply with the standards and rules established by the department under this chapter [board], after notice and a hearing, the commissioner [board] may refuse to:

(1) examine the applicant;

- (2) issue a license to the applicant; or
- (3) issue a business license to the parent company.

(c) On a determination that a person has violated this chapter or a [board] rule adopted by the department under this chapter, the commissioner [board] may:

- (1) revoke the person's license;
- (2) suspend the person's license;
- (3) place on probation a person whose license has been suspended; or
- (4) reprimand a license holder.

(d) The commissioner [board] may require a person whose license suspension is probated to:

- (1) report regularly to the department [board] on matters that are the basis of the probation;
- (2) limit practice to the areas prescribed by the department [board]; or
- (3) continue or renew professional education until the license holder attains a degree of skill satisfactory to the department [board] in those areas that are the basis of the probation.

SECTION 1.61. Section 1951.502, Occupations Code, is amended to read as follows:

Sec. 1951.502. RIGHT TO HEARING. (a) If the commissioner [board] proposes to suspend or revoke a person's license, the person is entitled to a hearing before the commissioner [board] or a hearings officer appointed by the commissioner [board].

(b) The commissioner [board] shall establish procedures by which a decision to suspend or revoke a license is made by or is appealable to the commissioner [board].

SECTION 1.62. Sections 1951.503(a) and (b), Occupations Code, are amended to read as follows:

(a) An applicant or license holder may appeal from an order or other action of the commissioner under this chapter [board] by bringing an action in a district court of Travis County.

(b) Notice of appeal must be filed not later than the 30th day after the date the commissioner [board] issues the order.

SECTION 1.63. Sections 1951.504(a), (b), (c), and (e), Occupations Code, are amended to read as follows:

(a) A settlement of a contested case under Chapter 2001, Government Code, must be approved by the commissioner [board].

(b) The department [board] by rule shall establish guidelines for the settlement of a contested case under Chapter 2001, Government Code.

(c) The commissioner [board] may authorize the department [its representatives] to conduct informal settlement negotiations between the department [board] and a license holder to resolve a complaint, other than a complaint involving a misapplication, by a consumer against the license holder.

(e) The department [board] by rule shall establish guidelines for the informal settlement of consumer complaints as provided by Subsections (c) and (d).

SECTION 1.64. Sections 1951.505(b) and (c), Occupations Code, are amended to read as follows:

(b) A person whose license is revoked may not apply for a new license until the first anniversary of the effective date of the revocation. A new license may not be issued without the approval of the department ~~[board]~~.

(c) If the commissioner ~~[board]~~ revokes the license of a certified applicator in one category, the commissioner ~~[board]~~ may place the applicator on probation for any other category in which the applicator is licensed.

SECTION 1.65. Subchapter K, Chapter 1951, Occupations Code, is amended by adding Section 1951.506 to read as follows:

Sec. 1951.506. EMERGENCY SUSPENSION. (a) The commissioner shall temporarily suspend the license of a person licensed under this chapter if the commissioner determines from the evidence or information presented to the commissioner that continued practice by the person would constitute a continuing and imminent threat to the public welfare or environment.

(b) A license may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare or environment still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

SECTION 1.66. Section 1951.551, Occupations Code, is amended to read as follows:

Sec. 1951.551. IMPOSITION OF ADMINISTRATIVE PENALTY. The commissioner ~~[board]~~ may impose an administrative penalty on a person who violates this chapter, ~~[or]~~ a rule adopted or order issued under this chapter, or a cease and desist order issued under Section 1951.604 ~~[by the board]~~.

SECTION 1.67. Section 1951.552(b), Occupations Code, is amended to read as follows:

(b) In determining the amount of the penalty, the commissioner ~~[board]~~ shall consider:

(1) the seriousness of the violation, including:  
 (A) the nature, circumstances, extent, and gravity of any prohibited act; and

(B) the hazard or potential hazard created to the health or safety of the public;

(2) the economic damage to property or the environment caused by the violation;

(3) the history of previous violations;

- (4) the amount necessary to deter future violations;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

SECTION 1.68. Section 1951.553, Occupations Code, is amended to read as follows:

Sec. 1951.553. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If, after investigation of a possible violation and the facts surrounding that possible violation, the commissioner [~~executive director~~] determines that a violation has occurred, the commissioner [~~executive director~~] may issue a violation report:

- (1) stating the facts on which the conclusion that a violation occurred is based;
- (2) recommending that an administrative penalty under this subchapter be imposed on the person charged; and
- (3) recommending the amount of the proposed penalty.

(b) The commissioner [~~executive director~~] must base the recommended amount of the proposed penalty on the seriousness of the violation determined after considering the factors set forth in Section 1951.552(b).

(c) Not later than the 14th day after the date on which the report is issued, the commissioner [~~executive director~~] shall give written notice of the report to the person charged. The notice must include:

- (1) a brief summary of the charges;
- (2) a statement of the amount of the penalty recommended; and
- (3) a statement of the right of the person charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.

SECTION 1.69. Section 1951.554, Occupations Code, is amended to read as follows:

Sec. 1951.554. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice, the person may:

- (1) accept the commissioner's [~~executive director's~~] determination, including the recommended administrative penalty; or
- (2) make a written request for a hearing on the determination.

(b) If the person charged accepts the commissioner's [~~executive director's~~] determination, the commissioner [~~board~~] shall issue an order approving the determination and ordering the payment of the recommended penalty.

SECTION 1.70. Section 1951.555, Occupations Code, is amended to read as follows:

Sec. 1951.555. HEARING; DECISION BY COMMISSIONER [~~BOARD~~]. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the commissioner [~~board~~] shall set a hearing and give notice of the hearing.

(b) The hearing shall be held by a hearings examiner designated by the commissioner [board]. The hearings examiner shall make findings of fact and conclusions of law and promptly issue to the commissioner [board] a proposal for a decision as to the occurrence of the violation, including a recommendation as to the amount of any proposed administrative penalty.

(c) Based on the findings of fact, conclusions of law, and recommendations of the hearings examiner, the commissioner [board] by order may:

- (1) determine that a violation occurred and impose a penalty; or
- (2) determine that a violation did not occur.

(d) A proceeding under this section is subject to Chapter 2001, Government Code.

SECTION 1.71. Section 1951.556, Occupations Code, is amended to read as follows:

Sec. 1951.556. NOTICE OF ORDER. The commissioner [board] shall give notice of the order to the person. The notice must include:

- (1) the findings of fact and conclusions of law, separately stated;
- (2) the amount of any administrative penalty imposed;
- (3) a statement of the person's right to judicial review of the commissioner's [board's] order; and
- (4) any other information required by law.

SECTION 1.72. Section 1951.557, Occupations Code, is amended to read as follows:

Sec. 1951.557. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

(a) Not later than the 30th day after the date the commissioner's [board's] order becomes final, the person shall:

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

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

- (1) paying the penalty to the department [board] for placement in an escrow account;
- (2) giving the department [board] a supersedeas bond in a form approved by the department [board] that:

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

(B) is effective until judicial review of the commissioner's [board's] order is final; or

(3) filing with the department [board] an affidavit stating that the person is financially unable to either pay the penalty or give the bond.

(c) A person who fails to take action as provided by this section waives the right to judicial review of the commissioner's [board's] order.

SECTION 1.73. Section 1951.558, Occupations Code, is amended to read as follows:

Sec. 1951.558. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the department [~~board~~] may refer the matter to the attorney general for collection of the penalty.

SECTION 1.74. Section 1951.559(a), Occupations Code, is amended to read as follows:

(a) If, after judicial review, the administrative penalty is reduced or is not upheld by the court, the department [~~board~~] shall:

(1) remit the appropriate amount, plus accrued interest, to the person against whom the penalty is imposed, if the person paid the penalty; or

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

SECTION 1.75. Section 1951.601, Occupations Code, is amended to read as follows:

Sec. 1951.601. ENFORCEMENT ACTION FOR MISAPPLICATION OF PESTICIDES. If the commissioner [~~board~~] finds that an applicator has misapplied pesticides, the commissioner [~~board~~] shall institute an enforcement action against the applicator. The department [~~board~~] by rule shall adopt a policy to implement this section.

SECTION 1.76. Section 1951.602, Occupations Code, is amended to read as follows:

Sec. 1951.602. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule, license, or order of the commissioner [~~board~~] is subject to a civil penalty of not less than \$50 or more than \$2,000 for each act of violation and for each day of violation.

(b) If it appears that a person has violated or is threatening to violate this chapter or a rule, license, or order of the commissioner [~~board~~], the commissioner [~~board, or the executive director if authorized by the board,~~] may have a civil action instituted in a district court for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation;

(2) the assessment and recovery of a civil penalty under Subsection (a);  
or

(3) both injunctive relief and the civil penalty.

(c) On application for injunctive relief and a finding that a person is violating or threatening to violate this chapter or a rule, license, or order of the commissioner [~~board~~], the district court shall grant injunctive relief as the facts warrant.

(d) At the request of the commissioner [~~board, or the executive director if authorized by the board~~], the attorney general shall institute and conduct an action in the name of the state for the injunctive relief, to recover the civil penalty, or both.

SECTION 1.77. Subchapter M, Chapter 1951, Occupations Code, is amended by adding Section 1951.604 to read as follows:

Sec. 1951.604. CEASE AND DESIST ORDER. If it appears to the commissioner that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of structural pest control, the commissioner after notice and opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

SECTION 1.78. Subchapter M, Chapter 1951, Occupations Code, is amended by adding Section 1951.605 to read as follows:

Sec. 1951.605. STOP USE ORDER. (a) If the department has reason to believe that a person licensed under this chapter is using or is in possession of a pesticide that is in violation of Chapter 76, Agriculture Code, the department may issue and enforce a written or printed order to stop the use of the pesticide. The department shall present the order to the owner or custodian of the pesticide. The person who receives the order may not use the pesticide until the department determines that the pesticide:

- (1) is in compliance with this chapter; or
- (2) does not present a hazard to the public health, safety, or welfare.

(b) This section does not limit the right of the department or commissioner to proceed as authorized by another section of this chapter, including in the assessment of an administrative penalty under this chapter.

(c) A person may appeal an order issued under this section in the manner provided by Subchapters K and L.

SECTION 1.79. The following provisions of the Occupations Code are repealed:

- (1) Section 1951.002(2);
- (2) Section 1951.007;
- (3) Sections 1951.106(b) and (c);
- (4) Section 1951.107; and
- (5) Subchapter D, Chapter 1951.

#### ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01. Section 88.215(b), Education Code, is amended to read as follows:

(b) The advisory committee consists of 11 [~~12~~] members appointed as follows:

- (1) one representative of Texas A & M University appointed by the director of the Texas Agricultural Experiment Station;
- (2) one representative of Texas Tech University appointed by the dean of the College of Agriculture of Texas Tech University;
- (3) one representative of The University of Texas appointed by the vice president for research of The University of Texas System;
- (4) one representative of the Department of Agriculture appointed by the commissioner of agriculture;
- (5) one representative of the Parks and Wildlife Department appointed by the director of the department;
- (6) one representative of the Public Utility Commission of Texas appointed by the executive director of the commission;

(7) one representative of municipal governments appointed by the governor;

(8) one representative of the general public appointed by the governor;

(9) one representative of the agribusiness industry appointed by the governor;

(10) ~~one representative of the Texas Structural Pest Control Board appointed by the executive director of the board;~~

~~(11)~~ one representative of the chemical industry appointed by the Texas Chemical Council; and

(11) ~~(12)~~ one representative of the oil and gas industry appointed by the Texas Mid-Continent Oil and Gas Association.

SECTION 2.02. Section 232.002, Family Code, is amended to read as follows:

Sec. 232.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. The following are licensing authorities subject to this chapter:

(1) Department of Agriculture;

(2) Texas Alcoholic Beverage Commission;

(3) Texas Appraiser Licensing and Certification Board;

(4) Texas Board of Architectural Examiners;

(5) Texas Board of Chiropractic Examiners;

(6) Comptroller of Public Accounts;

(7) Court Reporters Certification Board;

(8) State Board of Dental Examiners;

(9) Texas State Board of Examiners of Dietitians;

(10) Texas Funeral Service Commission;

(11) Department of State Health Services;

(12) Department of Aging and Disability Services;

(13) Texas Board of Professional Land Surveying;

(14) Texas Department of Licensing and Regulation;

(15) Texas State Board of Examiners of Marriage and Family

Therapists;

(16) Texas ~~State Board of~~ Medical Board ~~Examiners~~;

(17) Midwifery Board;

(18) Texas Commission on Environmental Quality;

(19) Board of Nurse Examiners;

(20) Texas Board of Occupational Therapy Examiners;

(21) Texas Optometry Board;

(22) Parks and Wildlife Department;

(23) Texas State Board of Examiners of Perfusionists;

(24) Texas State Board of Pharmacy;

(25) Texas Board of Physical Therapy Examiners;

(26) Texas State Board of Plumbing Examiners;

(27) Texas State Board of Podiatric Medical Examiners;

(28) Polygraph Examiners Board;

(29) Texas Private Security Board;

(30) Texas State Board of Examiners of Professional Counselors;

- (31) Texas Board of Professional Engineers;
- (32) Department of Family and Protective Services;
- (33) Texas State Board of Examiners of Psychologists;
- (34) Texas State Board of Public Accountancy;
- (35) Department of Public Safety of the State of Texas;
- (36) Public Utility Commission of Texas;
- (37) Railroad Commission of Texas;
- (38) Texas Real Estate Commission;
- (39) State Bar of Texas;
- (40) Texas State Board of Social Worker Examiners;
- (41) State Board of Examiners for Speech-Language Pathology and

Audiology;

- (42) ~~[Texas Structural Pest Control Board;~~
- ~~[(43)]~~ Board of Tax Professional Examiners;
- (43) ~~[(44)]~~ Secretary of State;
- (44) ~~[(45)]~~ Supreme Court of Texas;
- (45) ~~[(46)]~~ Texas Transportation Commission;
- (46) ~~[(47)]~~ State Board of Veterinary Medical Examiners;
- (47) ~~[(48)]~~ Texas Ethics Commission;
- (48) ~~[(49)]~~ Advisory Board of Athletic Trainers;
- (49) ~~[(50)]~~ State Committee of Examiners in the Fitting and Dispensing

of Hearing Instruments;

- (50) ~~[(51)]~~ Texas Board of Licensure for Professional Medical

Physicists;

- (51) ~~[(52)]~~ Texas Department of Insurance;
- (52) ~~[(53)]~~ Texas Board of Orthotics and Prosthetics;
- (53) ~~[(54)]~~ savings and mortgage lending ~~[loan]~~ commissioner;
- (54) ~~[(55)]~~ Texas Juvenile Probation Commission; and
- (55) ~~[(56)]~~ Texas Lottery Commission under Chapter 466, Government

Code.

SECTION 2.03. Section 2054.352(a), Government Code, is amended to read as follows:

(a) The following licensing entities shall participate in the system established under Section 2054.353:

- (1) Texas Board of Chiropractic Examiners;
- (2) Court Reporters Certification Board;
- (3) State Board of Dental Examiners;
- (4) Texas Funeral Service Commission;
- (5) Texas Board of Professional Land Surveying;
- (6) Texas ~~[State Board of]~~ Medical Board ~~[Examiners]~~;
- (7) Board of Nurse Examiners;
- (8) Texas Optometry Board;
- (9) Department of Agriculture, for licenses issued under Chapter 1951,

Occupations Code ~~[Texas Structural Pest Control Board]~~;

- (10) Texas State Board of Pharmacy;

- (11) Executive Council of Physical Therapy and Occupational Therapy Examiners;
- (12) Texas State Board of Plumbing Examiners;
- (13) Texas State Board of Podiatric Medical Examiners;
- (14) Board of Tax Professional Examiners;
- (15) Polygraph Examiners Board;
- (16) Texas State Board of Examiners of Psychologists;
- (17) State Board of Veterinary Medical Examiners;
- (18) Texas Real Estate Commission;
- (19) Texas Appraiser Licensing and Certification Board;
- (20) Texas Department of Licensing and Regulation;
- (21) Texas State Board of Public Accountancy;
- (22) State Board for Educator Certification;
- (23) Texas Board of Professional Engineers;
- (24) Department of State Health Services;
- (25) Texas Board of Architectural Examiners;
- (26) Texas Racing Commission;
- (27) Commission on Law Enforcement Officer Standards and Education; and
- (28) Texas Private Security Board.

SECTION 2.04. Section 411.101, Government Code, is repealed.

#### ARTICLE 3. TRANSITION AND EFFECTIVE DATE

SECTION 3.01. (a) The Texas Structural Pest Control Board is abolished but continues in existence until March 1, 2008, for the sole purpose of transferring obligations, property, full-time equivalent positions, rights, powers, and duties to the Department of Agriculture. The Department of Agriculture assumes all of the obligations, property, full-time equivalent positions, rights, powers, and duties of the Texas Structural Pest Control Board, as it exists immediately before the effective date of this Act. All unexpended funds appropriated to the Texas Structural Pest Control Board are transferred to the Department of Agriculture. The transfer of the obligations, property, full-time equivalent positions, rights, powers, and duties of the Texas Structural Pest Control Board to the Department of Agriculture must be completed not later than March 1, 2008.

(b) All rules of the Texas Structural Pest Control Board are continued in effect as rules of the Department of Agriculture until superseded by a rule of the Department of Agriculture. A certificate, license, or permit issued by the Texas Structural Pest Control Board is continued in effect as provided by the law in effect immediately before the effective date of this Act. A complaint, investigation, contested case, or other proceeding pending on the effective date of this Act is continued without change in status after the effective date of this Act. An inspection or other activity conducted by the Texas Structural Pest Control Board is considered to be an inspection or activity conducted by the Department of Agriculture.

(c) A reference in another law or an administrative rule to the Texas Structural Pest Control Board means the Department of Agriculture.

SECTION 3.02. (a) The Texas Structural Pest Control Board, in cooperation with and at the direction of the Department of Agriculture, shall complete all necessary computer programming and other tasks to ensure that the agency numbers assigned by the comptroller to the board and the department are not necessary for any fiscal year after 2007, except to complete earlier fiscal year revenue and expenditure transactions and reporting. The number assigned by the comptroller to the Department of Agriculture shall be used to record transactions related to the regulation of structural pest control beginning in fiscal year 2008.

(b) Not later than July 1, 2007, the Texas Structural Pest Control Board shall request that the comptroller grant the Department of Agriculture inquiry-only security access to the uniform statewide accounting system, the state property accounting system, the uniform statewide payroll system, and the human resources information system for the board. The Department of Agriculture and the comptroller may coordinate implementation of this section.

(c) Not later than July 15, 2007, the Department of Agriculture shall provide to the Texas Structural Pest Control Board detailed information regarding the board's responsibilities under Subsection (a) of this section.

SECTION 3.03. The change in law made by this Act with respect to conduct that is grounds for imposition of a disciplinary sanction, including an emergency suspension or a cease and desist order, applies only to conduct that occurs on or after September 1, 2007. Conduct that occurs before September 1, 2007, is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

SECTION 3.04. Not later than September 1, 2008, the Department of Agriculture shall adopt rules and policies required under:

- (1) Section 1951.105, Occupations Code, as amended by this Act;
- (2) Section 1951.207(a)(2), Occupations Code, as amended by this Act;
- (3) Section 1951.212(d), Occupations Code, as amended by this Act;

and

- (4) Section 1951.406, Occupations Code, as added by this Act.

SECTION 3.05. Not later than September 1, 2008, the commissioner of agriculture shall appoint the initial members of the structural pest control advisory committee under Section 1951.101, Occupations Code, as amended by this Act.

SECTION 3.06. Not later than September 1, 2008, each school district shall provide the name, address, telephone number, and e-mail address of the district's integrated pest management coordinator to the Department of Agriculture as required by Section 1951.212(e), Occupations Code, as amended by this Act.

SECTION 3.07. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2007.

(b) Section 3.02 of this Act takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Section 3.02 does not take effect.

Representative B. Cook moved to adopt the conference committee report on **HB 2458**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 2458** prevailed by (Record 1898): 137 Yeas, 2 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Haggerty; Hamilton; Hancock; Hardcastle; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Pierson; Pitts; Puente; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zerwas.

Nays — Harper-Brown; Phillips.

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

Absent, Excused — Bailey; Harless.

Absent — Callegari; Dukes; Guillen; Miller; Pickett; Quintanilla; Zedler.

### STATEMENT OF VOTE

When Record No. 1898 was taken, my vote failed to register. I would have voted yes.

Miller

### HB 126 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Delisi submitted the following conference committee report on **HB 126**:

Austin, Texas, May 25, 2007

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 126** 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  
Deuell  
Williams

Delisi  
B. Brown  
Bohac  
McReynolds  
Paxton

On the part of the senate

On the part of the house

**HB 126**, A bill to be entitled An Act relating to the offense of engaging in organized criminal activity.

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

SECTION 1. Section 32.51, Penal Code, is amended by amending Subsection (b) and adding Subsections (b-1) and (b-2) to read as follows:

(b) A person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses:

(1) identifying information of another person without the other person's consent; or

(2) without legal authorization, information concerning a deceased person that would be identifying information of that person were that person alive [and with intent to harm or defraud another].

(b-1) For the purposes of Subsection (b), the actor is presumed to have the intent to harm or defraud another if the actor possesses:

(1) the identifying information of three or more other persons;

(2) information described by Subsection (b)(2) concerning three or more deceased persons; or

(3) information described by Subdivision (1) or (2) concerning three or more persons or deceased persons.

(b-2) The presumption established under Subsection (b-1) does not apply to a business or other commercial entity or a government agency that is engaged in a business activity or governmental function that does not violate a penal law of this state.

SECTION 2. Section 71.02(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34 or 35;

(11) any offense under Section 37.11(a); ~~or~~

(12) any offense under Chapter 20A; or

(13) any offense under Section 37.10.

**SECTION 3.** This Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect at the time the offense was committed, and the former law is continued in effect for that purpose. For the purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

**SECTION 4.** This Act takes effect September 1, 2007.

Representative Delisi moved to adopt the conference committee report on **HB 126**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 126** prevailed by (Record 1899): 139 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Berman; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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



(C) for a limited liability company, either more than 50 percent, owned directly or indirectly, of the total membership interest of the limited liability company or more than 50 percent, owned directly or indirectly, of the beneficial ownership interest in the membership interest of the limited liability company.

(9) "Internal Revenue Code" means the Internal Revenue Code of 1986 in effect for the federal tax year beginning on January 1, 2007 [2006], not including any changes made by federal law after that date, and any regulations adopted under that code applicable to that period.

(10) "Lending institution" means an entity that makes loans and:

(A) is regulated by the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Commodity Futures Trading Commission, the Office of Thrift Supervision, the Texas Department of Banking, the Office of Consumer Credit Commissioner, [the Department of Savings and Mortgage Lending,] the Credit Union Department, or any comparable regulatory body;

(B) is licensed by, registered with, or otherwise regulated by the Department of Savings and Mortgage Lending;

(C) is a "broker" or "dealer" as defined by the Securities Exchange Act of 1934 at 15 U.S.C. Section 78c; or

(D) provides financing to unrelated parties solely for agricultural production.

(11-a) "Natural person" means a human being or the estate of a human being. The term does not include a purely legal entity given recognition as the possessor of rights, privileges, or responsibilities, such as a corporation, limited liability company, partnership, or trust.

(13-a) "Security," for purposes of Sections 171.1011(g), 171.1011(g-2), and 171.106(f) only, has the meaning assigned by Section 475(c)(2), Internal Revenue Code, and includes instruments described by Sections 475(e)(2)(B), (C), and (D) of that code.

(15) "Staff leasing services company" means:

(A) a business entity that offers staff leasing services, as that term is defined [has the meaning assigned] by Section 91.001, Labor Code; or

(B) a temporary employment service, as that term is defined by Section 93.001, Labor Code.

(17) "Unitary business" means a single economic enterprise that is made up of separate parts of a single entity or of a commonly controlled group of entities that are sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. In determining whether a unitary business exists, the comptroller shall consider any relevant factor, including whether:

(A) the activities of the group members[±

[⊕] are in the same general line, such as manufacturing, wholesaling, retailing of tangible personal property, insurance, transportation, or finance; [⊖]

(B) the activities of the group members [(H)] are steps in a vertically structured enterprise or process, such as the steps involved in the production of natural resources, including exploration, mining, refining, and marketing; or [and]

-(C) [(B)] the members are functionally integrated through the exercise of strong centralized management, such as authority over purchasing, financing, product line, personnel, and marketing.

SECTION 2. Section 171.0002, Tax Code, as effective January 1, 2008, is amended to read as follows:

Sec. 171.0002. DEFINITION OF TAXABLE ENTITY. (a) Except as otherwise provided by this section, "taxable entity" means a partnership, limited liability partnership, corporation, banking corporation, savings and loan association, limited liability company, business trust, professional association, business association, joint venture, joint stock company, holding company, or other legal entity. The term includes a combined group. A joint venture does not include joint operating or co-ownership arrangements meeting the requirements of Treasury Regulation Section 1.761-2(a)(3) that elect out of federal partnership treatment as provided by Section 761(a), Internal Revenue Code.

(b) "Taxable entity" does not include:

- (1) a sole proprietorship;
- (2) a general partnership;

(A) the direct ownership of which is entirely composed of natural persons; and

(B) the liability of which is not limited under a statute of this state or another state, including by registration as a limited liability partnership;

(3) a passive entity as defined by Section 171.0003; or

(4) an entity that is exempt from taxation under Subchapter B.

(c) "Taxable entity" does not include an entity that is:

(1) a grantor trust as defined by Sections 671 and 7701(a)(30)(E), Internal Revenue Code, all of the grantors and beneficiaries of which are natural persons or charitable entities as described in Section 501(c)(3), Internal Revenue Code, excluding a trust taxable as a business entity pursuant to Treasury Regulation Section 301.7701-4(b);

(2) an estate of a natural person as defined by Section 7701(a)(30)(D), Internal Revenue Code, excluding an estate taxable as a business entity pursuant to Treasury Regulation Section 301.7701-4(b);

(3) an escrow;

~~(4) a family limited partnership that is a passive entity in which at least 80 percent of the interests are held, directly or indirectly, by members of the same family, including an individual's ancestors, lineal descendants, spouse, and brothers and sisters by the whole or half blood, and the estate of any of these persons, and that is a limited partnership;~~

~~[(A) formed pursuant to the Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes);~~

~~[(B) formed pursuant to the limited partnership law of any other state; or~~

~~[(C) treated as a partnership for federal income tax purposes;~~  
~~[(5) a passive investment partnership that is a passive entity and that is:~~  
~~[(A) formed pursuant to the Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes);~~  
~~[(B) formed pursuant to the limited partnership law of any other state; or~~  
~~[(C) formed pursuant to the limited partnership laws of any foreign country;~~  
~~[(6) a passive investment partnership that is a passive entity and is a general partnership;~~  
~~[(7) a trust that is a passive entity:~~  
~~[(A) that is taxable as a trust under Section 641, Internal Revenue Code;~~  
~~[(B) all of the beneficiaries of which are natural persons or charitable entities as defined in Section 501(c)(3), Internal Revenue Code;~~  
~~[(C) that is not a trust taxable as a business entity pursuant to Treasury Regulation Section 301.7701-4(b); and~~  
~~[(D) that is organized as a trust and is described in Section 7701(a)(30)(E), Internal Revenue Code;~~  
~~[(8)] a real estate investment trust (REIT) as defined by Section 856, Internal Revenue Code, and its "qualified REIT subsidiary" entities as defined by Section 856(i)(2), Internal Revenue Code, provided that:~~  
~~(A) a REIT with any amount of its assets in direct holdings of real estate, other than real estate it occupies for business purposes, as opposed to holding interests in limited partnerships or other entities that directly hold the real estate, is a taxable entity; and~~  
~~(B) a limited partnership or other entity that directly holds the real estate as described in Paragraph (A) is not exempt under this subdivision, without regard to whether a REIT holds an interest in it; [✗]~~  
~~(5) [(9)] a real estate mortgage investment conduit (REMIC), as defined by Section 860D, Internal Revenue Code;~~  
~~(6) a nonprofit self-insurance trust created under Chapter 2212, Insurance Code, or a predecessor statute;~~  
~~(7) a trust qualified under Section 401(a), Internal Revenue Code; or~~  
~~(8) a trust or other entity that is exempt under Section 501(c)(9), Internal Revenue Code.~~

~~(d) An entity that can file as a sole proprietorship for federal tax purposes is not a sole proprietorship for purposes of Subsection (b)(1) and is not exempt under that subsection if the entity is formed in a manner under the statutes of this state, [✗] another state, or a foreign country that limit the liability of the entity.~~

~~SECTION 3. Section 171.0003(a), Tax Code, as effective January 1, 2008, is amended to read as follows:~~

~~(a) An entity is a passive entity only if:~~

~~(1) the entity is a general or limited partnership or a trust, other than a business trust;~~

(2) during the period on which margin is based, the entity's federal gross income consists of at least 90 percent of the following income:

(A) dividends, interest, foreign currency exchange gain, periodic and nonperiodic payments with respect to notional principal contracts, option premiums, cash settlement or termination payments with respect to a financial instrument, and income from a limited liability company;

(B) distributive shares of partnership income to the extent that those distributive shares of income are greater than zero;

(C) capital gains from the sale of real property, gains from the sale of commodities traded on a commodities exchange, and gains from the sale of securities; and

(D) royalties, bonuses, or delay rental income from mineral properties and income from other nonoperating mineral interests; and

(3) the entity does not receive more than 10 percent of its federal gross income from conducting an active trade or business.

SECTION 4. Section 171.0004(e), Tax Code, as effective January 1, 2008, is amended to read as follows:

(e) For purposes of this section:

(1) the ownership of a royalty interest or a nonoperating working interest in mineral rights does not constitute conduct of an active trade or business; ~~[and]~~

(2) payment of compensation to employees or independent contractors for financial or legal services reasonably necessary for the operation of the entity does not constitute conduct of an active trade or business; and

(3) holding a seat on the board of directors of an entity does not by itself constitute conduct of an active trade or business.

SECTION 5. Section 171.001, Tax Code, as effective January 1, 2008, is amended by adding Subsection (c) to read as follows:

(c) The tax imposed under this section or Section 171.0011 is not imposed on an entity if, during the period on which the report is based, the entity qualifies as a passive entity as defined by Section 171.0003.

SECTION 6. Sections 171.0011(a) and (b), Tax Code, as effective January 1, 2008, are amended to read as follows:

(a) Except as provided by Section 171.001(c) ~~[Subsection (e)]~~, an additional tax is imposed on a taxable entity that for any reason becomes no longer subject to the tax imposed under this chapter.

(b) The additional tax is equal to the appropriate rate under Section 171.002 of the taxable entity's taxable margin computed on the period beginning on the day after the last day for which the tax imposed on taxable margin or net taxable earned surplus was computed and ending on the date the taxable entity is no longer subject to the tax imposed under this chapter.

SECTION 7. Sections 171.002(a), (b), (c), and (d), Tax Code, as effective January 1, 2008, are amended to read as follows:

(a) Subject to Sections [Section] 171.003 and 171.1016 and except as provided by Subsection (b), the rate of the franchise tax is one percent ~~[per year of privilege period]~~ of taxable margin.

(b) Subject to Sections 171.003 and 171.1016, the ~~[The]~~ rate of the franchise tax is 0.5 percent ~~[per year of privilege period]~~ of taxable margin for those taxable entities primarily engaged in retail or wholesale trade.

(c) A taxable entity is primarily engaged in retail or wholesale trade only if:

(1) the total revenue from its activities in retail or wholesale trade is greater than the total revenue from its activities in trades other than the retail and wholesale trades;

(2) except as provided by Subsection (c-1), less than 50 percent of the total revenue from activities in retail or wholesale trade comes from the sale of products it produces or products produced by an entity that is part of an affiliated group to which the taxable entity also belongs; and

(3) the taxable entity does not provide retail or wholesale utilities, including telecommunications services, ~~[and]~~ electricity, or gas.

(d) A taxable entity is not required to pay any tax and is not considered to owe any tax for a period if:

(1) the amount of tax computed for the taxable entity is less than \$1,000; or

(2) the amount of the taxable entity's total revenue from its entire business is less than or equal to \$300,000 or the amount determined under Section 171.006 per 12-month period on which margin is based.

SECTION 8. Subchapter A, Chapter 171, Tax Code, is amended by adding Section 171.0021 to read as follows:

Sec. 171.0021. DISCOUNTS FROM TAX LIABILITY FOR SMALL BUSINESSES. (a) A taxable entity is entitled to a discount of the tax imposed under this chapter that the taxable entity is required to pay after determining its taxable margin under Section 171.101, applying the appropriate rate of the tax under Section 171.002(a) or (b), and subtracting any other allowable credits, as follows:

(1) for a taxable entity for which the total revenue from its entire business is greater than \$300,000 but less than \$400,000, the taxable entity is entitled to a discount of 80 percent;

(2) for a taxable entity for which the total revenue from its entire business is equal to or greater than \$400,000 but less than \$500,000, the taxable entity is entitled to a discount of 60 percent;

(3) for a taxable entity for which the total revenue from its entire business is equal to or greater than \$500,000 but less than \$700,000, the taxable entity is entitled to a discount of 40 percent; and

(4) for a taxable entity for which the total revenue from its entire business is equal to or greater than \$700,000 but less than \$900,000, the taxable entity is entitled to a discount of 20 percent.

(b) The amounts under Subsection (a) are subject to adjustment as provided by Section 171.006.

SECTION 9. The heading to Section 171.006, Tax Code, as effective January 1, 2008, is amended to read as follows:

Sec. 171.006. ADJUSTMENT OF ELIGIBILITY FOR NO TAX DUE, DISCOUNTS, [EXEMPTION] AND COMPENSATION DEDUCTION.

SECTION 10. Section 171.006(b), Tax Code, as effective January 1, 2008, is amended to read as follows:

(b) Beginning in 2010 ~~[2009]~~, on January 1 of each even-numbered ~~[odd-numbered]~~ year, the amounts prescribed by Sections 171.002(d)(2), 171.0021, and 171.1013(c) are increased or decreased by an amount equal to the amount prescribed by those sections on December 31 of the preceding year multiplied by the percentage increase or decrease during the preceding state fiscal biennium in the consumer price index and rounded to the nearest \$10,000.

SECTION 11. Section 171.101(d), Tax Code, as effective January 1, 2008, is amended to read as follows:

(d) An election under Subsection (a)(1)(B)(ii) shall be made by the taxable entity on its annual report and is effective only for that annual report. A taxable entity shall notify the comptroller of its election not later than the due date of the annual ~~[The election may be changed by filing an amended]~~ report.

SECTION 12. Section 171.1011, Tax Code, as effective January 1, 2008, is amended by amending Subsections (b), (c), (d), (e), (g-3), (h), (n), and (o) and adding Subsections (g-4) and (t) to read as follows:

(b) In this section, a reference to an amount reportable as income ~~[entered]~~ on a line number on an Internal Revenue Service form is the amount entered to the extent the amount entered complies with federal income tax law and includes the corresponding amount entered on a variant of the form, or a subsequent form, with a different line number to the extent the amount entered complies with federal income tax law. ~~[The comptroller shall adopt rules as necessary to accomplish the legislative intent prescribed by this subsection and Subsection (a).]~~

(c) Except as provided by this section, and subject to Section 171.1014, for the purpose of computing its taxable margin under Section 171.101, the total revenue of a taxable entity is:

(1) for a taxable entity treated for federal income tax purposes as a corporation, an amount computed by:

(A) adding:

(i) the amount reportable as income ~~[entered]~~ on line 1c, Internal Revenue Service Form 1120; ~~[and]~~

(ii) the amounts reportable as income ~~[entered]~~ on lines 4 through 10, Internal Revenue Service Form 1120; and

(iii) any total revenue reported by a lower tier entity as includable in the taxable entity's total revenue under Section 171.1015(b); and

(B) subtracting:

(i) bad debt expensed for federal income tax purposes that corresponds to items of gross receipts included in Subsection (c)(1)(A) for the current reporting period or a past reporting period;

(ii) to the extent included in Subsection (c)(1)(A), foreign royalties and foreign dividends, including amounts determined under Section 78 or Sections 951-964, Internal Revenue Code;

(iii) to the extent included in Subsection (c)(1)(A), net distributive income from a taxable entity [~~partnerships and from trusts and limited liability companies~~] treated as a partnership or [~~partnerships for federal income tax purposes and net distributive income from limited liability companies and corporations treated~~] as an S corporation [~~corporations~~] for federal income tax purposes;

(iv) allowable deductions from Internal Revenue Service Form 1120, Schedule C, to the extent the relating dividend income is included in total revenue;

(v) to the extent included in Subsection (c)(1)(A), items of income attributable to an entity that is a disregarded entity for federal income tax purposes; and

(vi) to the extent included in Subsection (c)(1)(A), other amounts authorized by this section;

(2) for a taxable entity treated for federal income tax purposes as a partnership, an amount computed by:

(A) adding:

(i) the amount reportable as income [~~entered~~] on line 1c, Internal Revenue Service Form 1065;

(ii) the amounts reportable as income [~~entered~~] on lines 4, 6, and [~~through~~] 7, Internal Revenue Service Form 1065; [~~and~~]

(iii) the amounts reportable as income [~~entered~~] on lines 3a and 5 [~~2~~] through 11, Internal Revenue Service Form 1065, Schedule K; [~~and~~]

(iv) the amounts reportable as income on line 17, Internal Revenue Service Form 8825;

(v) the amounts reportable as income on line 11, plus line 2 or line 45, Internal Revenue Service Form 1040, Schedule F; and

(vi) any total revenue reported by a lower tier entity as includable in the taxable entity's total revenue under Section 171.1015(b); and

(B) subtracting:

(i) bad debt expensed for federal income tax purposes that corresponds to items of gross receipts included in Subsection (c)(2)(A) for the current reporting period or a past reporting period;

(ii) to the extent included in Subsection (c)(2)(A), foreign royalties and foreign dividends, including amounts determined under Section 78 or Sections 951-964, Internal Revenue Code;

(iii) to the extent included in Subsection (c)(2)(A), net distributive income from a taxable entity [~~partnerships and from trusts and limited liability companies~~] treated as a partnership or [~~partnerships for federal income tax purposes and net distributive income from limited liability companies and corporations treated~~] as an S corporation [~~corporations~~] for federal income tax purposes;

(iv) to the extent included in Subsection (c)(2)(A), items of income attributable to an entity that is a disregarded entity for federal income tax purposes; and

(v) to the extent included in Subsection (c)(2)(A), other amounts authorized by this section; or

(3) for a taxable entity other than a taxable entity treated for federal income tax purposes as a corporation or partnership, an amount determined in a manner substantially equivalent to the amount for Subdivision (1) or (2) determined by rules that the comptroller shall adopt.

(d) Subject to Section 171.1014, a taxable entity ~~[corporation]~~ that is part of a federal consolidated group shall compute its total revenue under Subsection (c) as if it had filed a separate return for federal income tax purposes.

(e) A taxable entity that owns an interest in a passive entity ~~[that is not included in a group report under Section 171.1014]~~ shall exclude from ~~[include in]~~ the taxable entity's total revenue the taxable entity's share of the net income of the passive entity, but only to the extent the net income of the passive entity was ~~[not]~~ generated by the margin of any other taxable entity.

(g-3) A taxable entity that provides legal services shall exclude from its total revenue ~~[, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3)]~~:

(1) to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), the following flow-through funds that are mandated by law, contract, or fiduciary duty to be distributed to the claimant by the claimant's attorney or to other entities on behalf of a claimant by the claimant's attorney:

(A) damages due the claimant;

(B) funds subject to a lien or other contractual obligation arising out of the representation, other than fees owed to the attorney;

(C) funds subject to a subrogation interest or other third-party contractual claim; and

(D) fees paid an attorney in the matter who is not a member, partner, shareholder, or employee of the taxable entity;

(2) to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), reimbursement of the taxable entity's expenses incurred in prosecuting a claimant's matter that are specific to the matter and that are not general operating expenses; and

(3) ~~[the actual out of pocket expenses of the attorney, not to exceed]~~ \$500 per pro bono services case handled by the attorney, ~~[of providing pro bono legal services to a person,]~~ but only if the attorney maintains records of the pro bono services for auditing purposes in accordance with the manner in which those services are reported to the State Bar of Texas.

(g-4) A taxable entity that is a pharmacy cooperative shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), flow-through funds from rebates from pharmacy wholesalers that are distributed to the pharmacy cooperative's shareholders.

(h) If the taxable entity belongs to an affiliated group, the taxable entity may not exclude payments described by Subsection (f), (g), (g-1), (g-2), ~~[or]~~ (g-3), or (g-4) that are made to entities that are members of the affiliated group.

(n) Except as provided by Subsection (o), a taxable entity that is a health care provider shall exclude from its total revenue ~~[to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3)]~~:

(1) to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), the total amount of payments the health care provider received:

(A) under the Medicaid program, Medicare program, Indigent Health Care and Treatment Act (Chapter 61, Health and Safety Code), and Children's Health Insurance Program (CHIP);

(B) for professional services provided in relation to a workers' compensation claim under Title 5, Labor Code; and

(C) for professional services provided to a beneficiary rendered under the TRICARE military health system; and

(2) the actual cost to the health care provider for any uncompensated care provided, but only if the provider maintains records of the uncompensated care for auditing purposes and, if the provider later receives payment for all or part of that care, the provider adjusts the amount excluded for the tax year in which the payment is received.

(o) A health care provider that is a health care institution shall exclude from its total revenue ~~[to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3)]~~ 50 percent of the amounts described by Subsection (n).

(t) The comptroller shall adopt rules as necessary to accomplish the legislative intent prescribed by this section.

SECTION 13. Section 171.1011(l)(I), Tax Code, as effective January 1, 2008, is amended to read as follows:

(1) "Sales commission" means:

(A) any form of compensation paid to a person for engaging in an act for which a license is required by Chapter 1101, Occupations Code; ~~or [and]~~

(B) compensation paid to a sales representative by a principal in an amount that is based on the amount or level of certain orders for or sales of the principal's product and that the principal is required to report on Internal Revenue Service Form 1099-MISC.

SECTION 14. Section 171.1012(a)(3)(A), Tax Code, as effective January 1, 2008, is amended to read as follows:

(A) "Tangible personal property" means:

(i) personal property that can be seen, weighed, measured, felt, or touched or that is perceptible to the senses in any other manner;

(ii) films, sound recordings, videotapes, live and prerecorded television and radio programs, books, and other similar property embodying words, ideas, concepts, images, or sound, without regard to the means or methods of distribution or the medium in which the property is embodied, [by the creator of the property] for which, as costs are incurred in producing the property, it is intended or is reasonably likely that any ~~[tangible]~~ medium in which the property is embodied will be mass-distributed by the creator or any one or more third parties in a form that is not substantially altered; and

(iii) a computer program, as defined by Section 151.0031.

SECTION 15. Section 171.1012, Tax Code, as effective January 1, 2008, is amended by amending Subsections (c), (g), (h), and (k) and adding Subsection (o) to read as follows:

(c) The cost of goods sold includes all direct costs of acquiring or producing the goods, including:

- (1) labor costs;
- (2) cost of materials that are an integral part of specific property produced;
- (3) cost of materials that are consumed in the ordinary course of performing production activities;
- (4) handling costs, including costs attributable to processing, assembling, repackaging, and inbound transportation costs;
- (5) storage costs, including the costs of carrying, storing, or warehousing property, subject to Subsection (e);
- (6) depreciation, depletion, and amortization, reported on the federal income tax return on which the report under this chapter is based, to the extent associated with and necessary for the production of goods, including recovery described by Section 197, Internal Revenue Code;
- (7) the cost of renting or leasing equipment, facilities, or real property directly used for the production of the goods, including pollution control equipment and intangible drilling and dry hole costs;
- (8) the cost of repairing and maintaining equipment, facilities, or real property directly used for the production of the goods, including pollution control devices;
- (9) costs attributable to research, experimental, engineering, and design activities directly related to the production of the goods, including all research or experimental expenditures described by Section 174, Internal Revenue Code;
- (10) geological and geophysical costs incurred to identify and locate property that has the potential to produce minerals;
- (11) taxes paid in relation to acquiring or producing any material, or taxes paid in relation to services that are a direct cost of production;
- (12) the cost of producing or acquiring electricity sold; and
- (13) a contribution to a partnership in which the taxable entity owns an interest that is used to fund activities, the costs of which would otherwise be treated as cost of goods sold of the partnership, but only to the extent that those costs are related to goods distributed to the taxable entity as goods-in-kind in the ordinary course of production activities rather than being sold.

(g) A taxable entity that is allowed a subtraction by this section for a cost of goods sold and that is subject to Section 263A, 460, or 471, Internal Revenue Code, may [shall] capitalize that cost in the same manner and to the same extent that the taxable entity capitalized that cost on its federal income tax return or may expense those costs [is required or allowed to capitalize the cost under federal law and regulations], except for costs excluded under Subsection (e), or in accordance with Subsections (c), (d), and (f). If the taxable entity elects to capitalize costs, it must capitalize each cost allowed under this section that it capitalized on its federal income tax return. If the taxable entity later elects to begin expensing a

cost that may be allowed under this section as a cost of goods sold, the entity may not deduct any cost in ending inventory from a previous report. If the taxable entity elects to expense a cost of goods sold that may be allowed under this section, a cost incurred before the first day of the period on which the report is based may not be subtracted as a cost of goods sold. If the taxable entity elects to expense a cost of goods sold and later elects to capitalize that cost of goods sold, a cost expensed on a previous report may not be capitalized.

(h) A taxable entity shall determine its cost of goods sold, except as otherwise provided by this section, in accordance with the methods used on the federal income tax return on which the report under this chapter is based ~~[permitted by federal statutes and regulations]~~. This subsection does not affect the type or category of cost of goods sold that may be subtracted under this section.

(k) Notwithstanding any other provision of this section, if the taxable entity is a lending institution that offers loans to the public and elects to subtract cost of goods sold, the entity, other than an entity primarily engaged in an activity described by category 5932 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget, may subtract as a cost of goods sold an amount equal to interest expense. For purposes of this subsection, an entity engaged in lending to unrelated parties solely for agricultural production offers loans to the public.

(o) If a taxable entity, including a taxable entity with respect to which cost of goods sold is determined pursuant to Section 171.1014(e)(1), whose principal business activity is film or television production or broadcasting or the distribution of tangible personal property described by Subsection (a)(3)(A)(ii), or any combination of these activities, elects to subtract cost of goods sold, the cost of goods sold for the taxable entity shall be the costs described in this section in relation to the property and include depreciation, amortization, and other expenses directly related to the acquisition, production, or use of the property, including expenses for the right to broadcast or use the property.

SECTION 16. Section 171.1013, Tax Code, as effective January 1, 2008, is amended by amending Subsections (a), (b), and (c) and adding Subsection (b-1) to read as follows:

(a) Except as otherwise provided by this section, "wages and cash compensation" means the amount entered in the Medicare wages and tips box of Internal Revenue Service Form W-2 or any subsequent form with a different number or designation that substantially provides the same information. The term also includes, to the extent not included above:

(1) net distributive income from a taxable entity treated as a partnership ~~[partnerships and from trusts and limited liability companies treated as partnerships]~~ for federal income tax purposes, but only if the person receiving the distribution is a natural person;

(2) net distributive income from limited liability companies and corporations treated as S corporations for federal income tax purposes, but only if the person receiving the distribution is a natural person; ~~and~~

(3) stock awards and stock options deducted for federal income tax purposes; and

(4) net distributive income from a limited liability company treated as a sole proprietorship for federal income tax purposes, but only if the person receiving the distribution is a natural person.

(b) Subject to Section 171.1014, a taxable entity that elects to subtract compensation for the purpose of computing its taxable margin under Section 171.101 may subtract an amount equal to:

(1) subject to the limitation in Subsection (c), all wages and cash compensation paid by the taxable entity to its officers, directors, owners, partners, and employees; and

(2) the cost of all benefits, to the extent deductible for federal income tax purposes, the taxable entity provides to its officers, directors, owners, partners, and employees, including workers' compensation benefits, health care, employer contributions made to employees' health savings accounts, and retirement [~~to the extent deductible for federal income tax purposes~~].

(b-1) This subsection applies to a taxable entity that is a small employer, as that term is defined by Section 1501.002, Insurance Code, and that has not provided health care benefits to any of its employees in the calendar year preceding the beginning date of its reporting period. Subject to Section 171.1014, a taxable entity to which this subsection applies that elects to subtract compensation for the purpose of computing its taxable margin under Section 171.101 may subtract health care benefits as provided under Subsection (b) and may also subtract:

(1) for the first 12-month period on which margin is based and in which the taxable entity provides health care benefits to all of its employees, an additional amount equal to 50 percent of the cost of health care benefits provided to its employees for that period; and

(2) for the second 12-month period on which margin is based and in which the taxable entity provides health care benefits to all of its employees, an additional amount equal to 25 percent of the cost of health care benefits provided to its employees for that period.

(c) Notwithstanding the actual amount of wages and cash compensation paid by a taxable entity to its officers, directors, owners, partners, and employees, a taxable entity may not include more than \$300,000, or the amount determined under Section 171.006, per 12-month period on which margin is based, for any person in the amount of wages and cash compensation it determines under this section [~~Section 171.101~~]. If a person is paid by more than one entity of a combined group, the combined group may not subtract in relation to that person a total of more than \$300,000, or the amount determined under Section 171.006, per 12-month period on which margin is based.

SECTION 17. Section 171.1014, Tax Code, as effective January 1, 2008, is amended by amending Subsections (b), (d), and (f) and adding Subsections (d-1), (h), and (i) to read as follows:

(b) The combined group is a single taxable entity for purposes of the application of the tax imposed under this chapter, including Section 171.002(d).

(d) For purposes of Section 171.101, a combined group shall make an election to subtract either cost of goods sold or compensation that applies to all of its members. Regardless of the election, the taxable margin of the combined group may not exceed 70 percent of the combined group's total revenue from its entire business, as provided by Section 171.101(a)(1)(A).

(d-1) A member of a combined group may claim as cost of goods sold those costs that qualify under Section 171.1012 if the goods for which the costs are incurred are owned by another member of the combined group.

(f) For purposes of Section 171.101, a combined group that elects to subtract compensation shall determine that amount by:

(1) determining the compensation for each of its members as provided by Section 171.1013 as if each member were an individual taxable entity, subject to the limitation prescribed by Section 171.1013(c);

(2) adding the amounts of compensation determined under Subdivision (1) together; and

(3) subtracting from the amount determined under Subdivision (2) any compensation amounts paid from one member of the combined group to another member of the combined group, but only to the extent the corresponding item of total revenue was subtracted under Subsection (c)(3).

(h) Each taxable entity that is part of a combined group report shall, for purposes of determining margin and apportionment, include its activities for the same period used by the combined group.

(i) Each member of the combined group shall be jointly and severally liable for the tax of the combined group.

SECTION 18. Section 171.1015, Tax Code, as effective January 1, 2008, is amended to read as follows:

Sec. 171.1015. REPORTING FOR CERTAIN PARTNERSHIPS IN TIERED PARTNERSHIP ARRANGEMENT. (a) In this section, "tiered partnership arrangement" means an ownership structure in which any ~~all~~ of the interests in one taxable entity treated as a partnership or ~~[partnership, trust, or limited liability company that is treated for federal income taxes as a partnership or a limited liability company treated as]~~ an S corporation for federal income tax purposes (a "lower tier entity" ~~[an "upper tier partnership"]~~) are owned by one or more other taxable entities (an "upper ~~[a "lower"]~~ tier entity"). A tiered partnership arrangement may have two or more tiers.

(b) In addition to the tax it is required to pay under this chapter on its own taxable margin, a taxable entity that is an upper ~~[a lower]~~ tier entity may include, for purposes of calculating its own taxable margin, the total revenue ~~[pay the tax on the taxable margin]~~ of a lower tier entity ~~[higher tier partnership]~~ if the lower tier entity ~~[higher tier partnership]~~ submits a report to the comptroller showing the amount of total revenue ~~[taxable margin]~~ that each upper ~~[lower]~~ tier entity that owns it should include within the upper ~~[lower]~~ tier entity's own taxable margin calculation, according to the ownership ~~[profits]~~ interest of the upper ~~[lower]~~ tier entity. ~~[An upper tier partnership is not required to pay tax under this chapter on any taxable margin reported under this section.]~~

(c) This section does not apply to that percentage of the total revenue [~~taxable margin~~] attributable to an upper [~~a lower~~] tier entity by a lower tier entity [~~an upper tier partnership~~] if the upper [~~lower~~] tier entity is not subject to the tax under this chapter. In this case, the lower tier entity [~~higher tier partnership~~] is liable for the tax on its taxable margin.

(d) Section 171.002(d) does not apply to an upper tier entity if, before the attribution of any total revenue by a lower tier entity to an upper tier entity under this section, the lower tier entity does not meet the criteria of Section 171.002(d)(1) or (d)(2).

(e) The comptroller shall adopt rules to administer this section.

SECTION 19. Subchapter A, Chapter 171, Tax Code, is amended by adding Section 171.1016 to read as follows:

Sec. 171.1016. E-Z COMPUTATION AND RATE. (a) Notwithstanding any other provision of this chapter, a taxable entity whose total revenue from its entire business is not more than \$10 million may elect to pay the tax imposed under this chapter in the amount computed and at the rate provided by this section rather than in the amount computed and at the tax rate provided by Section 171.002.

(b) The amount of the tax for which a taxable entity that elects to pay the tax as provided by this section is liable is computed by:

(1) determining the taxable entity's total revenue from its entire business, as determined under Section 171.1011;

(2) apportioning the amount computed under Subdivision (1) to this state, as provided by Section 171.106, to determine the taxable entity's apportioned total revenue; and

(3) multiplying the amount computed under Subdivision (2) by the rate of 0.575 percent.

(c) A taxable entity that elects to pay the tax as provided by this section may not take a credit, deduction, or other adjustment that is not specifically authorized by this section.

(d) Section 171.0021 applies to a taxable entity that elects to pay the tax as provided by this section.

(e) A reference in this chapter or other law to the rate of the franchise tax means, as appropriate, the rate under Section 171.002 or, for a taxable entity that elects to pay the tax as provided by this section, the rate under this section.

SECTION 20. Section 171.103, Tax Code, as effective January 1, 2008, is amended by adding Subsections (c) and (d) to read as follows:

(c) A taxable entity that is a combined group shall include in a report filed under Section 171.201 or 171.202, for each member of the combined group that does not have nexus with this state for the purpose of taxation:

(1) the gross receipts computed under Subsection (a); and

(2) the gross receipts computed under Subsection (a) that are subject to taxation in another state under a throwback law or regulation.

(d) The information required by Subsection (c) may be used for informational purposes only. The comptroller shall adopt rules as necessary to enforce the reporting requirement prescribed by Subsection (c).

SECTION 21. Section 171.1055(b), Tax Code, as effective January 1, 2008, is amended to read as follows:

(b) In apportioning margin, receipts derived from transactions between individual members of a combined group that are excluded under Section 171.1014(c)(3) may not be included in the receipts of the taxable entity from its business done in this state as determined under Section 171.103, except that receipts ultimately derived from the sale of tangible personal property between individual members of a combined group where one member party to the transaction does not have nexus in this state shall be included in the receipts of the taxable entity from its business done in this state as determined under Section 171.103 to the extent that the member of the combined group that does not have nexus in this state resells the tangible personal property without substantial modification to a purchaser in this state. "Receipts ultimately derived from the sale" means the amount paid for the tangible personal property by the third party purchaser.

SECTION 22. Section 171.106, Tax Code, as effective January 1, 2008, is amended by adding Subsection (f) to read as follows:

(f) Notwithstanding Section 171.1055, if a loan or security is treated as inventory of the seller for federal income tax purposes, the gross proceeds of the sale of that loan or security are considered gross receipts.

SECTION 23. Section 171.111, Tax Code, as effective January 1, 2008, is amended to read as follows:

Sec. 171.111. TEMPORARY CREDIT ON TAXABLE MARGIN. (a) On the first report originally due under this chapter on or after January 1, 2008, ~~Not later than March 1, 2007,~~ a taxable entity must ~~may~~ notify the comptroller in writing of its intent to ~~preserve its right to~~ take a credit in an amount allowed by this section on the tax due on taxable margin. The taxable entity may thereafter elect to claim the credit for the current year and future year at or before the original due date of any report due after January 1, 2008 ~~2007~~, until the taxable entity revokes the election or this section expires, whichever is earlier. A taxable entity may claim the credit for not more than 20 consecutive privilege periods beginning with the first report originally due under this chapter on or after January 1, 2008 ~~2007~~. A taxable entity may make only one election under this section and the election may not be conveyed, assigned, or transferred to another entity.

(b) The credit allowed under this section for any privilege period is computed by:

(1) determining the amount of the business loss carryforwards of the taxable entity under Section 171.110(e), as that section applied to annual reports originally due before January 1, 2008, that were not exhausted on a report originally due under this chapter before January 1, 2008, ~~as of the end of the taxable entity's accounting year ending in 2006, of the difference between (i) the taxable entity's deductible temporary differences and net operating loss carryforwards, net of related valuation allowance amounts, shown on the taxable entity's books and records on the last day of its taxable year ending in 2006, and (ii) the taxable entity's taxable temporary differences as shown on those books~~

and records on that date. The amount of other net deferred tax items may be less than zero. For the purpose of computing the amount of the taxable entity's other net deferred tax items, any credit carryforward allowed under this chapter shall be excluded from the amount of deductible temporary differences to the extent such credit carryforward amount, net of any related valuation allowance amount, is otherwise included in the taxable entity's deductible temporary differences, net of related valuation allowance amounts, shown on the taxable entity's books and records on the last day of the taxable entity's taxable year ending in 2006];

(2) ~~[apportioning the amount determined under Subdivision (1) to this state in the same manner taxable margin is apportioned under Section 171.106 on the first report due on or after January 1, 2007;~~

~~[(3)]~~ multiplying the amount determined under Subdivision (1) ~~[(2)]~~ by:

(A) ~~2.25~~ ~~[40]~~ percent for reports originally due on or after January 1, 2008, and before January 1, 2018; and

(B) ~~7.75~~ percent for reports originally due on or after January 1, 2018, and before September 1, 2027; and

(3) ~~[(4)]~~ multiplying the amount determined under Subdivision (2) ~~[(3)]~~ by 4.5 percent ~~[the tax rate prescribed by Section 171.002(a)(2)].~~

(c) ~~[A taxable entity that notifies the comptroller of its intent to preserve its right to take a credit allowed by this section shall submit with its notice of intent a statement of the amount determined under Subsection (b)(1).] The comptroller may request that the taxable entity submit, with each [in the] annual report [for each succeeding privilege period] in which the taxable entity is eligible to take a credit, information relating to the amount determined under Subsection (b)(1). The taxable entity shall submit in the form and content the comptroller requires any information relating to [the assets and liabilities that determine the amount of the credit,] the amount determined under Subsection (b)(1)[,] or any other matter relevant to the computation of the credit for which the taxable entity is eligible.~~

(d) A credit that a taxable entity is entitled to under this section may ~~not be conveyed~~ ~~[convey]~~, ~~[and may not be]~~ assigned, or transferred~~[, in relation to a transaction in which the taxable entity is purchased by another entity]~~. A taxable entity loses the right to claim the credit if the entity changes combined groups after June 30, 2007.

(d-1) A taxable entity, other than a combined group, may not claim the credit under this section unless the taxable entity was, on May 1, 2006, subject to the tax imposed by this chapter as this chapter existed on that date. A taxable entity that is a combined group may claim the credit for each member entity that was, on May 1, 2006, subject to the tax imposed by this chapter as this chapter existed on that date and shall compute the amount of the credit for that member as provided by this section.

(d-2) The amount of credit claimed, including any unused credit carried forward, may not exceed the amount of franchise tax due for the report. Unused credits may not be carried forward to reports originally due on or after September 1, 2027.

(e) This section expires September 1, 2027 ~~[2026]~~.

SECTION 24. Section 171.1121(b), Tax Code, as effective January 1, 2008, is amended to read as follows:

(b) Except as otherwise provided by this section, a taxable entity shall use the same accounting methods to apportion margin as used in computing margin [reportable federal taxable income].

SECTION 25. Section 171.1532(b), Tax Code, as effective January 1, 2008, is amended to read as follows:

(b) The tax covering the regular annual period, other than a regular annual period included on the initial report, is based on the business done by the taxable entity during the period beginning with the day after the last date upon which taxable margin or net taxable earned surplus on a previous report was based and ending with its last accounting period ending date for federal income tax purposes in the year before the year in which the report is originally due.

SECTION 26. Section 171.201(a), Tax Code, as effective January 1, 2008, is amended to read as follows:

(a) Except as provided by Section 171.2022, a taxable entity on which the franchise tax is imposed shall file an initial report with the comptroller containing:

(1) financial information of the taxable entity necessary to compute the tax under this chapter [showing the financial condition of the taxable entity on the day that is the last day of a calendar month and that is nearest to the end of the taxable entity's first year of business];

(2) the name and address of:

(A) each officer, director, and manager of the taxable entity;

(B) for a limited partnership, each general partner;

(C) for a general partnership or limited liability partnership, each managing partner or, if there is not a managing partner, each partner; or

(D) for a trust, each trustee;

(3) the name and address of the agent of the taxable entity designated under Section 171.354; and

(4) other information required by the comptroller.

SECTION 27. Sections 171.203(a), (b), (d), and (e), Tax Code, as effective January 1, 2008, are amended to read as follows:

(a) A corporation or limited liability company on which the franchise tax is imposed, regardless of whether the corporation or limited liability company is required to pay any tax, shall file a report with the comptroller containing:

(1) the name of each corporation or limited liability company in which the corporation or limited liability company filing the report owns a 10 percent or greater interest and the percentage owned by the corporation or limited liability company;

(2) the name of each corporation or limited liability company that owns a 10 percent or greater interest in the corporation or limited liability company filing the report;

(3) the name, title, and mailing address of each person who is an officer or director of the corporation or limited liability company on the date the report is filed and the expiration date of each person's term as an officer or director, if any;

(4) the name and address of the agent of the corporation or limited liability company designated under Section 171.354; and

(5) the address of the corporation's or limited liability company's principal office and principal place of business.

(b) The corporation or limited liability company shall file the report once a year on a form prescribed by the comptroller.

(d) The corporation or limited liability company shall send a copy of the report to each person named in the report under Subsection (a)(3) who is not currently employed by the corporation or limited liability company or a related corporation or limited liability company listed in Subsection (a)(1) or (2). An officer or director of the corporation or limited liability company or another authorized person must sign the report under a certification that:

(1) all information contained in the report is true and correct to the best of the person's knowledge; and

(2) a copy of the report has been mailed to each person identified in this subsection on the date the return is filed.

(e) If a person's name is included in a report under Subsection (a)(3) and the person is not an officer or director of the corporation or limited liability company on the date the report is filed, the person may file with the comptroller a sworn statement disclaiming the person's status as shown on the report. The comptroller shall maintain a record of statements filed under this subsection and shall make that information available on request using the same procedures the comptroller uses for other requests for public information.

SECTION 28. Section 171.204, Tax Code, as effective January 1, 2008, is amended by adding Subsection (c) to read as follows:

(c) The comptroller may require any entity to file information as necessary to verify that the entity is not subject to the tax imposed under this chapter.

SECTION 29. Subchapter E, Chapter 171, Tax Code, is amended by adding Section 171.2125 to read as follows:

Sec. 171.2125. CALCULATING COST OF GOODS OR COMPENSATION IN STAFF LEASING ARRANGEMENTS. In calculating cost of goods sold or compensation, a taxable entity that is a client company of a staff leasing services company shall rely on information provided by the staff leasing services company on a form promulgated by the comptroller or an invoice.

SECTION 30. Subchapter E, Chapter 171, Tax Code, is amended by adding Section 171.214 to read as follows:

Sec. 171.214. BUSINESS TAX ADVISORY COMMITTEE. (a) The Business Tax Advisory Committee is created. The committee is composed of:

(1) two members of the house of representatives, appointed by the speaker of the house of representatives;

(2) two members of the senate, appointed by the lieutenant governor;  
and

(3) the following persons appointed by the comptroller:

(A) at least five residents of this state who are engaged in a private business, as either an employee or an owner, that is subject to taxation under this chapter; and

(B) at least two residents of this state with expertise in state business taxation.

(b) The comptroller shall determine the number of residents appointed under Subsection (a)(3).

(c) The comptroller is the presiding officer of the advisory committee.

(d) The advisory committee shall conduct a biennial study of the effects of the tax imposed under this chapter on businesses in this state. The study must take into consideration:

(1) the relative share of the tax paid by industry and by size of business;

(2) how the incidence of the tax compares with the economic makeup of this state's business economy;

(3) how the tax compares in structure and in amounts paid to the business taxes imposed by other states;

(4) the effect of the tax on the economic climate of this state, including the effect on capital investment and job creation;

(5) any factors that result in the tax not operating as intended; and

(6) any other item presented by the comptroller or by a majority of the committee.

(e) The comptroller by rule shall establish procedures for the functions of the advisory committee, including procedures requiring the advisory committee to issue a report on its findings to the speaker of the house of representatives, the lieutenant governor, and the governor not later than the date each regular session of the legislature begins.

(f) This section expires January 31, 2013.

SECTION 31. Subchapter G, Chapter 171, Tax Code, is amended by adding Sections 171.3015 and 171.3125 to read as follows:

Sec. 171.3015. FORFEITURE OF CERTIFICATE OR REGISTRATION OF TAXABLE ENTITY. The comptroller may, for the same reasons and using the same procedures the comptroller uses in relation to the forfeiture of a corporation's charter or certificate of authority, forfeit the certificate or registration of a taxable entity.

Sec. 171.3125. REVIVAL OF CERTIFICATE OR REGISTRATION OF TAXABLE ENTITY AFTER FORFEITURE BY SECRETARY OF STATE. (a) The secretary of state may, using the same procedures the secretary uses in relation to the revival of a corporation's charter or certificate, revive the certificate or registration of a taxable entity.

(b) The secretary of state may adopt rules to implement this section.

SECTION 32. Section 171.309, Tax Code, is amended to read as follows:

Sec. 171.309. FORFEITURE BY SECRETARY OF STATE. The secretary of state may forfeit the charter, ~~or~~ certificate, or registration of a taxable entity ~~[of authority of a corporation]~~ if:

(1) the secretary receives the comptroller's certification under Section 171.302 ~~[of this code]~~; and

(2) the taxable entity ~~[corporation]~~ does not revive its forfeited ~~[corporate]~~ privileges within 120 days after the date that the ~~[corporate]~~ privileges were forfeited~~], and~~

~~[(3) the corporation does not have assets from which a judgment for any tax, penalty, or court costs imposed by this chapter may be satisfied].~~

SECTION 33 Section 17, Chapter 1, Acts of the 79th Legislature, 3rd Called Session, 2006, is amended to read as follows:

Sec. 17. ~~[(a) The repeal of Section 171.111, Tax Code, by this Act does not affect a credit that accrued under that section before the effective date of this Act.~~

~~[(b)]~~ A corporation that has any unused credits established ~~[accrued]~~ before the effective date of this Act under Section 171.111, Tax Code, may claim those unused credits on or with the tax report for the period in which the credits were established ~~[accrued]~~, and the former law under which the corporation established ~~[accrued]~~ the credits is continued in effect for purposes of determining the amount of the credits the corporation may claim and the manner in which the corporation may claim the credits.

SECTION 34. Sections 18(b) through (f), Chapter 1, Acts of the 79th Legislature, 3rd Called Session, 2006, are amended to read as follows:

(b) This section does not affect a credit authorized by a provision listed in Subsection (a) of this section that was established [accrued] under Chapter 171, Tax Code, before the effective date of this Act or a credit that continues to accrue under Section 19 of this Act.

(c) A corporation that has any unused credits established ~~[accrued]~~ before the effective date of this Act under a provision other than Subchapter O, P, or Q, Chapter 171, Tax Code, may claim those unused credits on or with the tax report for the period in which the credits were established ~~[accrued]~~, and the former law under which the corporation established ~~[accrued]~~ the credits is continued in effect for purposes of determining the amount of the credits the corporation may claim and the manner in which the corporation may claim the credits.

(d) A corporation that has any unused credits established ~~[accrued]~~ before the effective date of this Act under Subchapter O, Chapter 171, Tax Code, may claim those unused credits on or with the tax report for the period in which the credit was established ~~[accrued]~~. However, if the corporation was allowed to carry forward unused credits under that subchapter, the corporation may continue to apply those credits on or with each consecutive report until the earlier of the date the credit would have expired under the terms of Subchapter O, Chapter 171, Tax Code, had it continued in existence, or December 31, 2027, and the former law under which the corporation established ~~[accrued]~~ the credits is continued in effect for purposes of determining the amount of the credits the corporation may claim and the manner in which the corporation may claim the credits.

(e) A corporation that has any unused credits established ~~[accrued]~~ before the effective date of this Act under Subchapter P, Chapter 171, Tax Code, may claim those unused credits on or with the tax report for the period in which the credit was established ~~[accrued]~~. However, if the corporation was allowed to carry forward unused credits under that subchapter, the corporation may continue to apply those credits on or with each consecutive report until the earlier of the

date the credit would have expired under the terms of Subchapter P, Chapter 171, Tax Code, had it continued in existence, or December 31, 2012, and the former law under which the corporation established ~~accrued~~ the credits is continued in effect for purposes of determining the amount of the credits the corporation may claim and the manner in which the corporation may claim the credits.

(f) A corporation that has any unused credits established ~~accrued~~ before the effective date of this Act under Subchapter Q, Chapter 171, Tax Code, may claim those unused credits on or with the tax report for the period in which the credit was established ~~accrued~~. However, if the corporation was allowed to carry forward unused credits under that subchapter, the corporation may continue to apply those credits on or with each consecutive report until the earlier of the date the credit would have expired under the terms of Subchapter Q, Chapter 171, Tax Code, had it continued in existence, or December 31, 2012, and the former law under which the corporation established ~~accrued~~ the credits is continued in effect for purposes of determining the amount of the credits the corporation may claim and the manner in which the corporation may claim the credits.

SECTION 35. (a) Section 22, Chapter 1, Acts of the 79th Legislature, 3rd Called Session, 2006, is amended by amending Subsection (b) and adding Subsections (b-1), (b-2), and (g) to read as follows:

(b) For an entity becoming subject to the franchise tax under this Act:

(1) margin or gross receipts occurring before June 1, 2006, may not be considered for purposes of determining taxable margin or for apportionment purposes; and

(2) an entity subject to the franchise tax on January 1, 2008, that was not previously subject to the tax and for which January 1, 2008, is not the beginning date, shall file an annual report due May 15, 2008, based on the period:

(A) if the entity has an accounting period that ends on or after January 1, 2007, and before June 1, 2007:

(i) beginning on the later of:

(a) June 1, 2006; or

(b) the date the entity was organized in this state or, if a foreign entity, the date it began doing business in this state; and

(ii) ending on the date that accounting period ends in 2007;

(B) if the entity has an accounting period that ends on or after June 1, 2007, and before December 31, 2007:

(i) beginning on the date that accounting period begins; and

(ii) ending on the date that accounting period ends in 2007;

and

(C) if the entity has an accounting period that ends on December 31, 2007, or if the entity does not have an accounting period that ends in 2007:

(i) beginning on the later of:

(a) January 1, 2007; or

(b) the date the entity was organized in the state or, if a foreign entity, the date it began doing business in this state; and

(ii) ending on December 31, 2007~~[-and~~

~~[(3) an entity subject to the franchise tax as it existed before the effective date of this Act at any time after December 31, 2006, and before January 1, 2008, but not subject to the franchise tax on January 1, 2008, shall file a final report for the privilege of doing business at any time after June 30, 2007, and before January 1, 2008, based on the period:~~

~~[(A) beginning on the later of:~~

~~[(i) January 1, 2007; or~~

~~[(ii) the date the entity was organized in this state or, if a foreign entity, the date it began doing business in this state; and~~

~~[(B) ending on the date the entity became no longer subject to the franchise tax].~~

(b-1) This subsection applies to an entity that:

(1) is not doing business in this state on January 1, 2008;

(2) would be subject to the franchise tax as amended by this Act if it were doing business in this state on or after January 1, 2008, but would not have been subject to the franchise tax as it existed before being amended by this Act; and

(3) was doing business in this state at any time after June 30, 2007, and before January 1, 2008.

(b-2) An entity to which Subsection (b-1) applies shall, for the privilege of doing business in this state at any time after June 30, 2007, and before January 1, 2008, file a final report and pay an additional tax equal to the appropriate rate under Section 171.002, Tax Code, as amended by this Act, of the entity's taxable margin based on the period:

(1) beginning on the later of:

(A) January 1, 2007; or

(B) the date the entity was organized in this state or, if a foreign entity, the date it began doing business in this state; and

(2) ending on the date the entity became no longer subject to the tax.

(g) Except as provided by Subsections (b-1) and (b-2) of this section, an entity becoming subject to the franchise tax under this Act that is part of a combined group report shall, for purposes of determining margin and apportionment, include its activity for the same period used by the combined group.

(b) This section takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this section takes effect September 1, 2007.

SECTION 36. Sections 23(b) and (f), Chapter 1, Acts of the 79th Legislature, 3rd Called Session, 2006, are amended to read as follows:

(b) The information report required under this section must contain the same information that an entity required to file the report would have submitted in its report due to the comptroller in 2006 under Chapter 171, Tax Code, if the changes made by this Act to Chapter 171, Tax Code, had been in effect January 1, 2006. The information report shall also contain the total of maintenance and

operations school property taxes paid by the entity to school districts in Texas in the 2005 [~~2006, and 2007~~] tax year [years]. The comptroller shall provide the forms and instructions to the entities required to file a report under this section.

(f) The comptroller:

- (1) shall identify the entities described by Subsection (d) of this section;
- (2) shall prepare all forms and instructions required for those entities to file their information reports as required by this section;
- (3) shall provide those forms and instructions to those entities on or after November 15, 2006, but before December 2, 2006;
- (4) shall require the entities to submit their information reports on or before February 15, 2007 [~~and February 15, 2008~~];
- (5) may not grant any extensions for filing the information reports; and
- (6) shall report to the governor, the lieutenant governor, and the members of the legislature, on or before April 1, 2007, [~~and April 1, 2008,~~] the results of the information reports, stating the amount of revenue generated by the tax under Chapter 171, Tax Code, [~~in each year,~~] the amount that would have been generated from the entities submitting information reports under this section if the changes made by this Act to Chapter 171, Tax Code, had been in effect January 1, 2006, and the school maintenance and operations property taxes paid by the entities in the 2005 [~~2006, and 2007~~] tax year [years].

SECTION 37. The following provisions of the Tax Code are repealed:

- (1) Section 171.0011(e), as effective January 1, 2008;
- (2) Section 171.1011(p)(4-b), as effective January 1, 2008;
- (3) Section 171.1014(g), as effective January 1, 2008; and
- (4) Section 171.2035, as effective January 1, 2008.

SECTION 38. This Act applies only to a report originally due on or after the effective date of this Act.

SECTION 39. The taxation method provided by Section 171.002, Tax Code, as amended by this Act, and the taxation method provided by Section 171.1016, Tax Code, as added by this Act, are not severable, and neither provision would have been enacted without the other. If the taxation method provided by Section 171.002, Tax Code, as amended by this Act, is held invalid, the taxation method provided by Section 171.1016, Tax Code, as added by this Act, is also invalid.

SECTION 40. Except as otherwise provided by this Act, this Act takes effect January 1, 2008.

### **HB 3928 - STATEMENT OF LEGISLATIVE INTENT**

REPRESENTATIVE SMITHEE: Mr. Keffer, not only did the senate take out the Sprint amendment, which the house overwhelmingly passed, but they also inserted their own language, didn't they?

REPRESENTATIVE KEFFER: Yes, they did.

SMITHEE: Well, actually, I said their own language, I think it was the telephone industry's language.

KEFFER: You're right, that's exactly the way it was.

SMITHEE: Which instead of prohibiting the charging of that tax, expressly allowed the charging of that tax to the consumer.

KEFFER: That's certainly the way we could construe that, because they were setting up what you could do if you were going to pass that through, yes, sir.

SMITHEE: Now why in the world they would do that, I have no idea, but I told you at the time that my main concern, that I would love to go back to the house language, because I thought it protected the consumer, but at the very least, what I wanted to do was get that language out of the bill that would permit these companies to charge that, because that was never legislative intent, is that correct?

KEFFER: That is correct, yes.

SMITHEE: And so I appreciate you working with me. You asked for me to be on the conference committee, you went to conference, and you had agreed, and Senator Ogden had agreed, originally, that we could go back to the house language, but there came up a problem that some of the telephone industry was threatening to work against the bill if that stayed in there. Is that correct?

KEFFER: Yes, sir. That's correct.

SMITHEE: And you, and Senator Ogden, and both expressed concern that if they killed the bill, that it could jeopardize the small business tax, increasing the small business exemption, and some other things that are probably good.

KEFFER: Yes, sir.

SMITHEE: Now to me that's despicable that an industry would jeopardize an important piece of legislation just for their own personal benefit, and I know you agree with that.

KEFFER: I do agree.

SMITHEE: And in fact, after several of those telephone companies had assured me, and given me their word they would not charge this tax to their consumers, over the next couple of years, isn't it true that one of the companies actually came to you or a staff member and said they were going to do it whether we prohibited them from doing it or not, because they didn't think we could stop them.

KEFFER: They were going to go through with it, and I think there's a case in another state where they've been sued and going through to try and see what they can do as far as a pass-through there, yes.

SMITHEE: Well, you know, we've been very charitable to some of these phone companies over the last two sessions, and I think that some of them look at this process with an arrogance of basically thinking that they're the ones that make the decisions and we're just here to carry them out. I'm in a position where we got the language out that I found so offensive, but I still think we let our constituents down by getting back to where we are, but I just want to make sure, for legislative intent, as you know, the attorney general presently filed a lawsuit.

KEFFER: That's right.

SMITHEE: And there are some cases that hold that one of the rules of legislative construction, when we're doing legislative history, that if the legislature deletes a provision from a pending bill, that can be construed in some instances as intent that it not become law. So my specific question to you as the author of this bill, is whether the removal of the house amendment regarding the basic prohibition of charging that tax is an intent on your part to allow these companies to charge that tax to the consumer?

KEFFER: I want to be very, very clear that that is not my intent.

SMITHEE: And is it true that the reason that language came out was primarily because of these companies' despicable attempts to try to kill the legislation if it was left in, and it is not an intent by anybody to allow them to charge this charge to consumers?

KEFFER: No one in this house, I feel, would ever—well, I'll say as author of this bill, it is not my intent, and yes, there was a great concern that that might happen.

SMITHEE: Okay, well I hope that this legislative intent can be used to some extent by the attorney general in this suit, because I think it would be a very unanimous view of this house that they shouldn't be doing this to our constituents. So thank you, Mr. Keffer.

#### REMARKS ORDERED PRINTED

Representative Vo moved to print remarks between Representative Smithee and Representative Keffer.

The motion prevailed.

Representative Keffer moved to adopt the conference committee report on **HB 3928**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 3928** prevailed by (Record 1900): 136 Yeas, 5 Nays, 3 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Hartnett; Heflin; Hernandez; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Lucio; Macias; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Riddle;

Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

Nays — Farrar; Harper-Brown; Herrero; Leibowitz; Mallory Caraway.

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

Absent, Excused — Bailey; Harless.

Absent — Dutton; King, S.; Paxton; Pierson.

### STATEMENTS OF VOTE

I was shown voting no on Record No. 1900. I intended to vote yes.

Harper-Brown

When Record No. 1900 was taken, my vote failed to register. I would have voted yes.

S. King

### HB 1060 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Parker submitted the following conference committee report on **HB 1060**:

Austin, Texas, May 22, 2007

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 1060** 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  
Brimer  
Lucio  
Watson

Parker  
D. Howard  
McClendon  
Kolkhorst  
Zerwas

On the part of the senate

On the part of the house

**HB 1060**, A bill to be entitled An Act relating to the use of electronically readable information from a driver's license or personal identification certificate by hospitals.

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

SECTION 1. Section 521.126, Transportation Code, is amended by amending Subsection (b) and adding Subsections (i), (j), and (k) to read as follows:

(b) Except as provided by Subsections (d), (e), ~~(f)~~ (g), (i), and (j), a person commits an offense if the person:

(1) accesses or uses electronically readable information derived from a driver's license, commercial driver's license, or personal identification certificate; or

(2) compiles or maintains a database of electronically readable information derived from driver's licenses, commercial driver's licenses, or personal identification certificates.

(i) The prohibition provided by Subsection (b) does not apply to a hospital that accesses, uses, compiles, or maintains a database of the information to provide health care services to the individual who holds the driver's license, commercial driver's license, or personal identification certificate.

(j) Except as otherwise provided by this subsection, a hospital may not sell, transfer, or otherwise disseminate the information described by Subsection (i) to a third party for any purpose, including any marketing, advertising, or promotional activities. A hospital that obtains information described by Subsection (i) may transfer the information only in accordance with the rules implementing the federal Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191). A business associate, and any subcontractor of the business associate who receives the transferred information, may use the information only to service or maintain the hospital's database of the information.

(k) If an individual objects to the hospital collecting the individual's information from the individual's driver's license as described by Subsection (i), the hospital must use an alternative method for collecting the individual's information.

SECTION 2. This Act takes effect September 1, 2007.

Representative Parker moved to adopt the conference committee report on **HB 1060**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1060** prevailed by (Record 1901): 145 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez;

Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent, Excused — Bailey; Harless.

Absent — Davis, J.

### **HB 1457 - ADOPTION OF CONFERENCE COMMITTEE REPORT**

Representative McReynolds submitted the following conference committee report on **HB 1457**:

Austin, Texas, May 25, 2007

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 1457** 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.

Nichols	McReynolds
Estes	Chisum
Eltife	Kuempel
Hegar	Miller
On the part of the senate	On the part of the house

**HB 1457**, A bill to be entitled An Act relating to the acceptable methods for disposal of poultry carcasses.

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

SECTION 1. Section 26.303(a), Water Code, is amended to read as follows:

(a) The commission by rule shall adopt requirements for the safe and adequate handling, storage, transportation, and disposal of poultry carcasses. The rules must:

(1) specify the acceptable methods for disposal of poultry carcasses, including:

(A) placement in a landfill permitted by the commission to receive municipal solid waste;

(B) composting;

(C) cremation or incineration;

(D) extrusion;

(E) on-farm freezing;

(F) rendering; and

(G) ~~cooking for swine food; and~~

~~(H)~~ any other method the commission determines to be appropriate;

(2) require poultry carcasses stored on the site of a poultry facility to be stored in a varmint-proof receptacle to prevent odor, leakage, or spillage;

(3) prohibit the storage of poultry carcasses on the site of a poultry facility for more than 72 hours unless the carcasses are refrigerated or frozen; and

(4) authorize the on-site burial of poultry carcasses only in the event of a major die-off that exceeds the capacity of a poultry facility to handle and dispose of poultry carcasses by the normal means used by the facility.

SECTION 2. This Act takes effect September 1, 2007.

Representative McReynolds moved to adopt the conference committee report on **HB 1457**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1457** prevailed by (Record 1902): 141 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Castro; Chavez; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent, Excused — Bailey; Harless.

Absent — Burnam; Chisum; Crownover; Keffer; Madden.

### **HB 3105 - ADOPTION OF CONFERENCE COMMITTEE REPORT**

Representative Anchia submitted the following conference committee report on **HB 3105**:

Austin, Texas, May 25, 2007

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 3105** 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

Ellis

Hinojosa

Shapiro

Duncan

On the part of the senate

Bohac

Farias

Burnam

England

Anchia

On the part of the house

**HB 3105**, A bill to be entitled An Act relating to a program allowing for countywide voting locations in certain elections.

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

SECTION 1. Subchapter A, Chapter 43, Election Code, is amended by adding Section 43.007 to read as follows:

Sec. 43.007. COUNTYWIDE POLLING PLACE PROGRAM. (a) The secretary of state shall implement a program to allow each commissioners court participating in the program to eliminate county election precincts and establish countywide polling places for:

(1) each general election for state and county officers;

(2) each countywide election held on the uniform election date in May;

and

(3) each election of a political subdivision located in the county that is held jointly with an election described by Subdivision (1) or (2).

(b) The commissioners court of a county that desires to participate in the program authorized by this section shall hold a public hearing on the county's participation in the program. The commissioners court shall submit a transcript or electronic recording of the public comments made at the hearing to the secretary of state. A county that has previously participated in a similar program and held a public hearing on the county's participation in that program is not required to hold a hearing under this subsection.

(c) In conducting the program, the secretary of state shall provide for an audit of the direct recording electronic voting units before and after the election, and during the election to the extent such an audit is practicable.

(d) The secretary of state shall select to participate in the program each county that:

(1) has held a public hearing under Subsection (b);

(2) has implemented a computerized voter registration list that allows an election officer at the polling place to verify that a voter has not previously voted in the election;

(3) uses direct recording electronic voting machines; and

(4) is determined by the secretary of state to have the appropriate technological capabilities.

(e) Each countywide polling place must allow a voter to vote in the same elections in which the voter would be entitled to vote in the county election precinct in which the voter resides.

(f) In selecting countywide polling places, a county must adopt a methodology for determining where each polling place will be located. The total number of countywide polling places may not be less than 50 percent of the number of precinct polling places that would otherwise be located in the county.

(g) A county participating in the program must establish a plan to provide notice informing voters of the changes made to the locations of polling places under the program. The plan must require that notice of the location of the nearest countywide polling place be posted on election day at each polling place used in the previous general election for state and county officers that is not used as a countywide polling place.

(h) In creating the plan under Subsection (g), the county shall solicit input from organizations located within the county who represent minority voters.

(i) The secretary of state may select a county to participate in the program that has previously participated in a similar program.

(j) The secretary of state shall operate the program established under Subsection (a) as a pilot program until June 1, 2009.

(k) At the conclusion of the pilot program established under Subsection (a), but not later than January 1, 2009, the secretary of state shall file a report with the legislature. The report may include the secretary of state's recommendations on the future use of countywide polling places and suggestions for permanent statutory authority regarding countywide polling places.

(l) This section expires June 1, 2009.

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, 2007.

Representative Anchia moved to adopt the conference committee report on **HB 3105**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 3105** prevailed by (Record 1903): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pierson;

Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent, Excused — Bailey; Harless.

Absent — Burnam; McCall; Oliveira.

### **HB 3849 - ADOPTION OF CONFERENCE COMMITTEE REPORT**

Representative Hilderbran submitted the following conference committee report on **HB 3849**:

Austin, Texas, May 25, 2007

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 3849** 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  
Wentworth  
Hegar  
Watson  
Deuell

Hilderbran  
Kuempel  
Harless  
O'Day

On the part of the senate

On the part of the house

**HB 3849**, A bill to be entitled An Act relating to the registration of all-terrain vehicles by the Texas Department of Transportation; creating an offense.

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

SECTION 1. Section 502.001(1), Transportation Code, is amended to read as follows:

(1) "All-terrain vehicle" means a motor vehicle that is [~~not a golf cart and is~~]:

(A) equipped with a saddle, [~~or~~] bench, or bucket seats for the use of:

(i) the rider; and

(ii) a passenger, if the motor vehicle is designed by the manufacturer to transport a passenger;

(B) designed to propel itself with three or more tires in contact with the ground;

(C) designed by the manufacturer for off-highway use [~~by the operator only~~]; and

(D) not designed by the manufacturer primarily for farming or lawn care.

SECTION 2. Section 29.001, Parks and Wildlife Code, is amended to read as follows:

Sec. 29.001. DEFINITION. In this chapter, "off-highway vehicle" means:

(1) an all-terrain vehicle, as defined by Section 663.001, Transportation Code;

(2) an off-highway motorcycle; and

(3) any other motorized vehicle used for off-highway recreation on:

(A) public land over which the department has authority or on land purchased or leased by the department; or

(B) land acquired or developed under a grant made under Section 29.008 or any other grant program operated or administered by the department [four-wheel drive vehicle not registered to be driven on a highway].

SECTION 3. Section 29.003(a), Parks and Wildlife Code, is amended to read as follows:

(a) Except as provided by Section 29.004, a person may not operate an off-highway vehicle on public land over which the department has authority, on land purchased or leased by the department, [a trail or in a recreational area established or maintained by the department under this chapter,] on other public land, or on land purchased or developed under a grant made under Section 29.008 or any other grant program operated or administered by the department on which off-highway vehicle recreation is legal without having obtained and properly mounted an off-highway vehicle decal.

SECTION 4. Section 29.005(a), Parks and Wildlife Code, is amended to read as follows:

(a) The department shall issue an off-highway vehicle decal [to any person whose off-highway vehicle is registered under Section 502.006, Transportation Code,] on the payment of the fee under Section 29.003(b).

SECTION 5. Chapter 29, Parks and Wildlife Code, is amended by adding Section 29.011 to read as follows:

Sec. 29.011. SAFETY APPAREL REQUIRED. (a) A person may not operate, ride, or be carried on an off-highway vehicle on public property unless the person wears:

(1) a safety helmet that complies with United States Department of Transportation standards; and

(2) eye protection.

(b) An offense under this section is a Class C Parks and Wildlife Code misdemeanor.

SECTION 6. Sections 502.006(c) and (d), 502.169, 502.205, and 502.406, Transportation Code, are repealed.

SECTION 7. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

Representative Hilderbran moved to adopt the conference committee report on **HB 3849**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 3849** prevailed by (Record 1904): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycok; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent, Excused — Bailey; Harless.

Absent — Hughes; Latham; Smith, W.

**HR 2793 - ADOPTED**  
**(by Hartnett)**

The following privileged resolution was laid before the house:

**HR 2793**

BE IT RESOLVED by the House of Representatives of the State of Texas, 80th Legislature, Regular Session, 2007, 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 593** (proof of, and providing notice to certain beneficiaries under, a decedent's will) 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 a SECTION to the bill to amend Section 6.02, **HB 391**, Acts of the 80th Legislature, Regular Session, 2007, to read as follows:

SECTION 5. Section 6.02, **HB 391**, Acts of the 80th Legislature, Regular Session, 2007, as effective September 1, 2007, is amended to read as follows:

SECTION 6.02. The changes in law made by this article apply only to[

~~[(1) the estate of a decedent who dies before the effective date of this article, if the probate or administration of the estate is pending on or commenced on or after the effective date of this article; and~~

~~[(2)] the estate of a decedent who dies on or after the effective date of this article.~~

Explanation: The addition of the SECTION to the bill is necessary to make a technical change in the applicability of an amendment made by SECTION 6.01, **HB 391**, Acts of the 80th Legislature, Regular Session, 2007, to Section 85, Texas Probate Code.

(2) House Rule 13, Section 9(a)(1), is suspended to permit the committee to change the text of the SECTION of the bill that is renumbered in the conference committee report as SECTION 6 to read as follows:

SECTION 6. The changes in law made by Sections 1, 2, 3, and 4 of this Act apply only to the estate of a decedent who dies on or after the effective date of this Act. The estate of a decedent who dies before the effective date of this Act is governed by the law in effect on the date of the decedent's death, and the former law is continued in effect for that purpose.

Explanation: The change to the applicability provision of the bill is necessary to reflect the addition of SECTION 5 to the conference committee report and to avoid having the applicability provision affect that added SECTION.

**HR 2793** was adopted.

### **SB 593 - ADOPTION OF CONFERENCE COMMITTEE REPORT**

Representative Hartnett submitted the conference committee report on **SB 593**.

Representative Hartnett moved to adopt the conference committee report on **SB 593**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 593** prevailed by (Record 1905): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett;

Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent, Excused — Bailey; Harless.

Absent — Hodge; Miller; Vaught.

### STATEMENT OF VOTE

When Record No. 1905 was taken, my vote failed to register. I would have voted yes.

Miller

### HB 2120 - HOUSE DISCHARGES CONFEREES HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

**HB 2120**, A bill to be entitled An Act relating to the operation of the unemployment compensation system and eligibility for and computation of an individual's unemployment compensation benefits.

Representative Deshotel moved to discharge the conferees and concur in the senate amendments to **HB 2120**.

A record vote was requested.

The motion to discharge conferees and concur in senate amendments prevailed by (Record 1906): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Tourelles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent, Excused — Bailey; Harless.

Absent — Dukes; Hill; Rose.

### Senate Committee Substitute

**CSHB 2120**, A bill to be entitled An Act relating to the operation of the unemployment compensation system and computation of an individual's unemployment compensation benefits; providing a criminal penalty.

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

SECTION 1. Section 207.002, Labor Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) An eligible individual who is totally unemployed in a benefit period is entitled to benefits for the benefit period at the rate of 1/25 of the wages received by the individual from employment by employers during that quarter in the individual's base period in which wages were highest. For purposes of this subsection, the wages received by the individual from employment by employers during the individual's base period include wages ordered to be paid to the individual by a final order of the commission under Chapter 61 that:

(1) were due to be paid to the individual by an employer during the individual's base period; and

(2) will be credited to the date or dates on which the payment of those wages was due.

(a-1) The commission by rule shall determine the method of crediting wages to a particular quarter for purposes of Subsection (a).

(a-2) The rate of benefits paid under this section may not be more than the maximum weekly benefit amount computed under Subsection (b) or less than the minimum weekly benefit amount computed under Subsection (b) for each benefit period.

SECTION 2. Section 207.004, Labor Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The commission shall credit as benefit wage credits during an individual's base period:

(1) [~~an individual's~~] wages the individual received for employment from an employer during the individual's base period; and

(2) wages ordered to be paid by a final order issued by the commission under Chapter 61 that:

(A) were due to be paid by an employer during the individual's base period; and

(B) will be credited to the date or dates on which the payment of those wages was due [~~as the individual's benefit wage credits~~].

(a-1) The commission by rule shall determine the method of crediting wages to an individual's base period for purposes of Subsection (a).

SECTION 3. Sections 301.081(c) and (d), Labor Code, are amended to read as follows:

(c) Employment information ~~[thus]~~ obtained or otherwise secured under this section may not be published and is not open to public inspection, other than to a public employee in the performance of public duties, except as the commission considers necessary for the proper administration of this title or as provided by commission rule and consistent with federal law.

(d) A person commits an offense if the person ~~[is an employee or member of the commission who]~~ violates any provision of this section. An offense under this subsection is a Class A misdemeanor ~~[is punishable by a fine of not less than \$20 nor more than \$200, confinement in jail for not more than 90 days, or both fine and confinement].~~

SECTION 4. Subchapter F, Chapter 301, Labor Code, is amended by adding Section 301.085 to read as follows:

Sec. 301.085. UNEMPLOYMENT COMPENSATION INFORMATION; OFFENSE; PENALTY. (a) In this section, "unemployment compensation information" means information in the records of the commission that pertains to the administration of Subtitle A, including any information collected, received, developed, or maintained in the administration of unemployment compensation benefits or the unemployment compensation tax system.

(b) Consistent with federal law, the commission shall adopt and enforce reasonable rules governing the confidentiality, custody, use, preservation, and disclosure of unemployment compensation information. The rules must include safeguards to protect the confidentiality of identifying information regarding any individual or any past or present employer or employing unit contained in unemployment compensation information, including any information that foreseeably could be combined with other publicly available information to reveal identifying information regarding the individual, employer, or employing unit, as applicable.

(c) Unemployment compensation information is not public information for purposes of Chapter 552, Government Code.

(d) Unless permitted by this subchapter or commission rule, a person commits an offense if the person solicits, discloses, receives, or uses, or authorizes, permits, participates in, or acquiesces in another person's use of, unemployment compensation information that reveals:

(1) identifying information regarding any individual or past or present employer or employing unit; or

(2) information that foreseeably could be combined with other publicly available information to reveal identifying information regarding any individual or past or present employer or employing unit.

(e) An offense under Subsection (d) is a Class A misdemeanor.

SECTION 5. (a) The changes in law made by this Act apply only to eligibility for unemployment benefits based on an unemployment compensation claim that is filed with the Texas Workforce Commission on or after the effective date of this Act. A claim filed before that date is governed by the law in effect on the date the claim was filed, and the former law is continued in effect for that purpose.

(b) The change in law made by this Act to Section 301.081(d), Labor Code, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect at the time the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 6. This Act takes effect 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, 2007.

**HB 3694 - HOUSE DISCHARGES CONFEREES  
HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

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

**HB 3694**, A bill to be entitled An Act relating to the enterprise zone program.

Representative Deshotel moved to discharge the conferees and concur in the senate amendments to **HB 3694**.

A record vote was requested.

The motion to discharge conferees and concur in senate amendments prevailed by (Record 1907): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anderson; Aycock; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent, Excused — Bailey; Harless.

Absent — Anchia; Hill; Strama.

### STATEMENT OF VOTE

When Record No. 1907 was taken, I was in the house but away from my desk. I would have voted yes.

Strama

### Senate Committee Substitute

**CSHB 3694**, A bill to be entitled An Act relating to the enterprise zone program.

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

SECTION 1. Sections 2303.003(5-a), (7), and (8), Government Code, are amended to read as follows:

(5-a) "Office" means the Texas Economic Development and Tourism Office within the office of the governor.

(7) "Qualified employee" means a person who:

(A) works for a qualified business; and

(B) performs at least 50 percent of the person's service for the business at the qualified business site ~~[in the enterprise zone]~~.

(8) "Qualified hotel project" means a hotel proposed to be constructed by a municipality on land owned by a municipality, a county, or a nonprofit municipally sponsored or county-sponsored local government corporation created under the Texas Transportation Corporation Act, Chapter 431, Transportation Code, that is within 1,000 feet of a convention center owned by a municipality or county having a population of 1,100,000 ~~[1,500,000]~~ or more, including shops, parking facilities, and any other facilities ancillary to the hotel.

SECTION 2. Section 2303.004, Government Code, is amended to read as follows:

Sec. 2303.004. JURISDICTION OF MUNICIPALITY. (a) For the purposes of this chapter, territory in the municipal boundaries and in the extraterritorial jurisdiction of a municipality is considered to be in the jurisdiction of the municipality.

(b) Notwithstanding Subsection (a), the governing body of a county with a population of 750,000 or more may nominate for designation as an enterprise project a project or activity of a qualified business that is located within the jurisdiction of a municipality located in the county. For purposes of this subsection, a county during any biennium may not use in any one municipality more than three of the maximum number of designations the county is permitted under Section 2303.406(d)(2).

SECTION 3. Section 2303.052, Government Code, is amended to read as follows:

Sec. 2303.052. BANK [EVALUATION;] REPORT REGARDING PROGRAM. ~~[(a)]~~ The bank must include the following information regarding the enterprise zone program in the report required by Section 489.107 [shall conduct a continuing evaluation of the enterprise zone program.]

~~[(b) The bank shall develop data from available information demonstrating the relationship between the incentives provided under this chapter and the economy.~~

~~[(e) The bank biennially shall review local incentives.~~

~~[(d) On or before January 1 of each year the bank shall submit to the governor, the legislature, and the Legislative Budget Board a report that]:~~

~~(1) an evaluation of [evaluates] the effectiveness of the [enterprise zone] program;~~

~~(2) a description of [describes] the use of state and local incentives under this chapter and their effect on revenue; and~~

~~(3) suggestions for [suggests] legislation with regard to the program.~~

SECTION 4. Section 2303.401, Government Code, is amended to read as follows:

Sec. 2303.401. DEFINITIONS. In this subchapter:

(1) "New permanent job" means a new employment position that:

(A) is created by a qualified business as described by Section 2303.402 at the qualified business site not earlier than the 90th day before the date the business's project or activity is designated as an enterprise project under this chapter;

(B) will provide or has provided for the duration of the project's designation period [that:

~~[(A) has provided]~~ at least 1,820 hours of employment a year to a qualified employee; and

(C) will [(B) is intended to] exist or has existed at the qualified business site for the longer of:

(i) the duration of the project's designation period; or

(ii) [at least] three years after the date on which a state benefit is received as authorized by this chapter.

(2) "Retained job" means a job that:

(A) existed with a qualified business on the 91st day before the date [designation of] the business's project or activity is designated as an enterprise project;

(B) [that:

[(A)] has provided and will continue to provide employment to a qualified employee of at least 1,820 hours annually; and

(C) will [(B) is intended to] be or has been an employment position for the longer of:

(i) the duration of the project's designation period; or

(ii) [at least] three years after the expiration date of the claim period for receipt of [date on which] a state benefit [is received as] authorized by this chapter.

SECTION 5. Section 2303.402(c), Government Code, is amended to read as follows:

(c) For the purposes of this section, an economically disadvantaged individual is an individual who:

(1) was unemployed for at least three months before obtaining employment with the qualified business;

(2) receives public assistance benefits, including welfare payments or food stamps, based on need and intended to alleviate poverty;

(3) is a low-income [~~an economically disadvantaged~~] individual, as defined by Section 101, Workforce Investment Act of 1998 (29 U.S.C. Section 2801(25)) [~~4(8), Job Training Partnership Act (29 U.S.C. Section 1503(8))~~];

(4) is an individual with a disability [~~handicaps~~], as defined by 29 U.S.C. Section 705(20)(A) [~~706(8)~~];

(5) is an inmate, as defined by Section 498.001;

(6) is entering the workplace after being confined in a facility operated by the institutional division of the Texas Department of Criminal Justice or under contract with the Texas Department of Criminal Justice;

(7) has been released by the Texas Youth Commission and is on parole, if state law provides for such a person to be on parole; or

(8) meets the current low income or moderate income limits developed under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f et seq.).

SECTION 6. Section 2303.403, Government Code, is amended to read as follows:

Sec. 2303.403. PROHIBITION ON QUALIFIED BUSINESS CERTIFICATION; LIMIT ON ENTERPRISE PROJECT DESIGNATIONS. If the bank determines that the governing body eligible to nominate an enterprise project is not complying with this chapter, the bank shall prohibit the certification of a qualified business until the bank determines that the governing body is complying with this chapter. The bank may not designate more than 105 [~~85~~] enterprise projects during any biennium. Any designations remaining at the end of a biennium may be carried forward to the next biennium.

SECTION 7. Section 2303.404(c), Government Code, is amended to read as follows:

(c) The designation period for an enterprise project may not be for less than one year or more than [~~exceed~~] five years from the date on which the designation is made.

SECTION 8. Sections 2303.405(a) and (b), Government Code, are amended to read as follows:

(a) If the governing body approves a request made under Section 2303.404, the governing body may apply to the bank for the designation of the project or activity of a qualified business as an enterprise project only after it submits to the bank the order or ordinance and other information that complies with the requirements of Sections 2303.4051 and 2303.4052.

(b) An application must contain an economic analysis of the plans of the qualified business for expansion, revitalization, or other activity with regard to the enterprise project, including:

(1) the number of employment positions in existence at the qualified business site on the 91st day before the application deadline;

(1-a) the number of ~~anticipated~~ new permanent jobs the enterprise project commits to [will] create during the designation period presented in the form of a tabular listing of:

(A) the classification titles of those jobs; and

(B) the number of jobs and salary range for each classification title;

(2) the ~~anticipated~~ number of permanent jobs the enterprise project commits to [will] retain during the designation period presented in the form of a tabular listing of:

(A) the classification titles of the retained jobs; and

(B) the number of retained jobs and salary range for each classification title;

(3) the amount of investment to be made by the enterprise project;

(4) a complete description of the projected schedule for completion of the specific activity described by Section 2303.404(b) to be undertaken by the enterprise project;

(5) other information the bank requires;

(6) a description of the local effort made by the nominating body, the qualified business, and other affected entities to develop and revitalize the jurisdiction of the governmental entity nominating the project or activity; and

(7) if the nominating body is applying for a double or triple jumbo enterprise project, as defined by Section 2303.407, an indication of which level [of those types] of designation [designations] is being sought.

SECTION 9. Sections 2303.4051(a), (b), (e), (f), and (g), Government Code, are amended to read as follows:

(a) In this section, "local incentive" means each tax incentive, grant, other financial incentive or benefit, or program to be provided by the governing body to qualified businesses participating in the enterprise zone program [business enterprises in the block group] and any other local incentive listed in Section 2303.511.

(b) Before nominating the project or activity of a qualified business for designation as an enterprise project, the governing body of the municipality or county in which the business is located, by ordinance or order, as appropriate, must identify and summarize briefly any local incentives available[-:

~~[(1) in each of the block groups or other areas within its jurisdiction that qualify as an enterprise zone under Section 2303.101, if any; and~~

~~[(2) in any area within its jurisdiction that does not qualify as an enterprise zone].~~

(e) An ~~[Unless the nominating body holds a public hearing before adopting an ordinance or order under this section, the]~~ ordinance or order adopted under this section is not valid unless the nominating body holds a public hearing before adopting the ordinance or order. Notice of the hearing must be published in a newspaper having general circulation in the municipality not later than the seventh calendar day before the date of the hearing. The notice must contain:

(1) the date, time, and location of the hearing;

(2) the provisions for any tax or other incentives applicable to the enterprise zone program;

(3) the name of the qualified business whose project or activity is being nominated for enterprise project designation; and

(4) the location of the qualified business site.

(f) If the nominating body has previously nominated a project or activity for designation as an enterprise project, the nominating body, instead of issuing a new ordinance or order under this section for a nominated project or activity, may by resolution make a reference to a previously issued ordinance or order that met the requirements of this section if:

(1) the resolution nominates the project or activity for designation as an enterprise project and states:

(A) whether the nominated project or activity is located in an area designated as an enterprise zone;

(B) the level of enterprise project designation being sought; and

(C) the ending date of the project's designation period;

(2) the local incentives described in the previously issued ordinance or order ~~for the areas described by Subsections (b)(1) and (2)~~ are ~~substantially~~ the same on the date the resolution is issued; and

(3) the local incentives to be made available to the nominated project or activity are the same as those made available to the project or activity that are the subject of the previously issued ordinance or order.

(g) This section does not prohibit a municipality or county from extending additional incentives, including tax incentives, for qualified businesses ~~[business enterprises]~~ in an enterprise zone by a separate order or ordinance.

SECTION 10. Section 2303.4052, Government Code, is amended to read as follows:

Sec. 2303.4052. REQUIRED INFORMATION FROM NOMINATING BODY. Before nominating the project or activity of a qualified business for designation as an enterprise project, the nominating body must submit to the bank:

(1) a certified copy of the ordinance or order, as appropriate, or reference to an ordinance or order as required by Section 2303.4051;

(2) a transcript of all public hearings conducted with respect to local incentives available to qualified businesses ~~[business enterprises]~~ within the jurisdiction of the governmental entity nominating the project or activity, regardless of whether those businesses ~~[business enterprises]~~ are located in an enterprise zone;

(3) the name, title, address, telephone number, and electronic mail address of the nominating body's liaison designated under Section 2303.204; ~~[and]~~

(4) if the business is seeking job retention benefits, documentation showing the number of employment positions at the qualified business site; and

(5) any additional information the bank may require.

SECTION 11. Section 2303.406, Government Code, is amended by amending Subsection (a) and adding Subsections (g) and (h) to read as follows:

(a) The bank may designate a project or activity of a business as an enterprise project only if the bank receives all of the information required by Section 2303.4052 and determines that:

(1) the business is a qualified business under Section 2303.402 that is located in or has made a substantial commitment to locate in an enterprise zone or at a qualified business site;

(2) the nominating body making the application has demonstrated that a high level of cooperation exists among public, private, and neighborhood entities within the jurisdiction of the governmental entity nominating the project or activity;

(3) the designation will contribute significantly to the achievement of the plans of the nominating body making the application for development and revitalization of the area in which the enterprise project will be located; and

(4) if the business is seeking job retention benefits, the business has clearly demonstrated that:

(A) the permanent employees of the business will be permanently laid off;

(B) the business will close down permanently;

(C) the business will relocate out-of-state;

(D) the business is able to employ individuals in accordance with Section 2303.402 ~~[a 10 percent increase in the production capacity of the business will occur];~~ or

(E) ~~[a 10 percent decrease in overall cost per unit produced will occur;~~

~~[(F)]~~ the business facility has been legitimately destroyed or substantially impaired because of fire, flood, tornado, hurricane, or any other natural disaster and that at least 60 percent of the capital investment is being spent to repair damages resulting from the disaster~~]; or~~

~~[(G) the business facility is both adding a new business line or product and deleting or decreasing an existing business line or product, and the designation will prevent the facility's net production capacity from decreasing].~~

(g) The bank may lower the designation level of a proposed project or activity nominated for enterprise project designation:

(1) if there are fewer designations available than applications received;

or

(2) to further the economic interests of the state.

(h) A state benefit may not be obtained under this chapter or Chapter 151, Tax Code, for jobs moved from one jurisdiction in this state to another jurisdiction in this state.

SECTION 12. Section 2303.406(e), Government Code, as added by Chapter 814, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(e) The office may, during any biennium, designate multiple concurrent enterprise projects to a qualified business located in an enterprise zone ~~[during any biennium].~~

SECTION 13. Section 2303.407, Government Code, is amended to read as follows:

Sec. 2303.407. ALLOCATION OF JOBS ELIGIBLE FOR TAX REFUND.

(a) The bank shall allocate to an enterprise project the maximum number of new permanent jobs or retained jobs eligible based on the amount of capital investment made in the project, the project's designation level, and the refund per job with a maximum refund to be included in a computation of a tax refund for the project.

(b) A capital investment in a project of:

(1) \$40,000 to \$399,999 will result in a refund of up to \$2,500 per job with a maximum refund of \$25,000 for the creation or retention of 10 jobs;

(2) \$400,000 to \$999,999 will result in a refund of up to \$2,500 per job with a maximum refund of \$62,500 for the creation or retention of 25 jobs;

(3) \$1,000,000 to \$4,999,999 will result in a refund of up to \$2,500 per job with a maximum refund of \$312,500 for the creation or retention of 125 jobs;

(4) \$5,000,000 to \$149,999,999 will result in a refund of up to \$2,500 per job with a maximum refund of \$1,250,000 for the creation or retention of 500 jobs;

(5) \$150,000,000 to \$249,999,999 will result in a refund of up to \$5,000 per job with a maximum refund of \$2,500,000 for the creation or retention of 500 jobs if the bank designates the project as a double jumbo enterprise project; or

(6) \$250,000,000 or more will result in a refund of up to \$7,500 per job with a maximum refund of \$3,750,000 for the creation or retention of at least 500 jobs if the bank designates the project as a triple jumbo enterprise project.

(c) An enterprise project for which a commitment for a [A] capital investment in the range amount and the creation or retention of the number of jobs specified [described] by Subsection (b)(5) is made is considered a double jumbo enterprise project if the project is so designated by the bank.

(d) An enterprise project for which a commitment for a [A] capital investment in the range amount and the creation or retention of the number of jobs specified [described] by Subsection (b)(6) is made is considered a triple jumbo enterprise project if the project is so designated by the bank.

SECTION 14. Section 2303.4072, Government Code, is amended to read as follows:

Sec. 2303.4072. ENTERPRISE PROJECT CLAIM FOR STATE BENEFIT. A person must make a claim to the comptroller for a state benefit as prescribed under this chapter and Chapter ~~[Chapters]~~ 151 ~~[and 171]~~, Tax Code, not later than 18 months after the date on which the term of the enterprise project designation expires as provided by Section 2303.404.

SECTION 15. Section 2303.502(c), Government Code, is amended to read as follows:

(c) The bank shall disseminate the reports to the governing bodies of the entities that nominated the enterprise projects [enterprise zones] and others as necessary to advance the purposes of this chapter.

SECTION 16. (a) Section 2303.504, Government Code, is amended to read as follows:

Sec. 2303.504. STATE TAX REFUNDS AND CREDITS; REPORT. (a) Subject to Section 2303.516, an enterprise project is entitled to:

- (1) a refund of state taxes under Section 151.429, Tax Code; and
- (2) a franchise tax credit under Subchapter Q-1, Chapter 171, Tax

Code.

(b) At the time of receipt of any tax benefit available as a result of participating in the enterprise zone program, including a state sales and use tax refund or franchise tax credit, three percent of the amount of the tax benefit shall be transferred to the Texas economic development bank fund under Subchapter B, Chapter 489, to defray the cost of administering this chapter.

(c) Not later than the 60th day after the last day of each fiscal year, the comptroller shall report to the bank the statewide total of actual jobs created, actual jobs retained, and the tax refunds and credits made under this section during that fiscal year.

(b) Chapter 171, Tax Code, is amended by adding Subchapter Q-1 to read as follows:

SUBCHAPTER Q-1. TAX CREDITS FOR ENTERPRISE PROJECTS FOR  
CERTAIN CAPITAL INVESTMENTS

Sec. 171.815. DEFINITIONS. In this subchapter:

(1) "Enterprise project" means:

(A) a person designated by the Texas Department of Economic Development as an enterprise project under Chapter 2303, Government Code, on or after September 1, 2001, but before September 1, 2003; and

(B) a person designated by the Texas Economic Development Bank as an enterprise project under Chapter 2303, Government Code, on or after September 1, 2003, but before January 1, 2005.

(2) "Enterprise zone" has the meaning assigned by Section 2303.003, Government Code.

(3) "Qualified business" means a person certified as a qualified business under Section 2303.402, Government Code.

(4) "Qualified capital investment" means tangible personal property that is first placed in service in an enterprise zone by a qualified business that has been designated as an enterprise project and that is described in Section 1245(a), Internal Revenue Code, such as engines, machinery, tools, and implements used in a trade or business or held for investment and subject to an allowance for depreciation, cost recovery under the accelerated cost recovery system, or amortization. The term does not include real property or buildings and their structural components. Property that is leased under a capitalized lease is considered a qualified capital investment, but property that is leased under an operating lease is not considered a qualified capital investment. Property expensed under Section 179, Internal Revenue Code, is not considered a qualified capital investment.

Sec. 171.816. TANGIBLE PERSONAL PROPERTY FIRST PLACED IN SERVICE IN AN ENTERPRISE ZONE. For purposes of determining whether an investment is a qualified capital investment under Section 171.815, "tangible personal property first placed in service in an enterprise zone" includes tangible personal property:

(1) purchased by an enterprise project for placement in an improvement that was under active construction or other physical preparation;

(2) identified by a purchase order, invoice, billing, sales slip, or contract; and

(3) physically present at the enterprise project's qualified business site, as defined by Section 2303.003, Government Code, and in use by the enterprise project on the original due date of the report on which the credit is taken.

Sec. 171.817. ELIGIBILITY. (a) Subject to Subsection (b), an enterprise project is eligible for a credit against the tax imposed under this chapter in the amount and under the conditions and limitations provided by this subchapter if the enterprise project is a qualified business.

(b) An enterprise project is not eligible for a credit under this subchapter if the enterprise project claimed a credit under Subchapter Q before the repeal of that subchapter on January 1, 2008.

(c) An enterprise project that is eligible for a credit under this subchapter may claim a credit or take a carryforward credit without regard to whether the enterprise zone in which it made the qualified capital investment subsequently loses its designation as an enterprise zone.

(d) A taxable entity, other than a combined group, may not claim the credit under this subchapter unless the taxable entity was, on May 1, 2006, subject to the tax imposed by this chapter as this chapter existed on that date. A taxable entity that is a combined group may claim the credit for each member entity that was, on May 1, 2006, subject to the tax imposed by this chapter as this chapter existed on that date and shall compute the amount of the credit for that member as provided by this subchapter.

Sec. 171.818. CALCULATION OF CREDIT. (a) An enterprise project that is eligible for a credit under this subchapter may, on or after the later of January 1, 2008, or the date the project was designated, establish a credit equal to 7.5 percent of the qualified capital investment made on or after January 1, 2005, and before January 1, 2007.

(b) The enterprise project may claim the entire credit earned on a report originally due on or after January 1, 2008, and before January 1, 2009, subject to Section 171.819.

Sec. 171.819. LIMITATIONS. The total credit claimed under this subchapter for a report, including the amount of any carryforward credit under Section 171.820, may not exceed 50 percent of the amount of franchise tax due for the report before any other applicable tax credits.

Sec. 171.820. CARRYFORWARD. If an enterprise project is eligible for a credit that exceeds the limitation under Section 171.819, the enterprise project may carry the unused credit forward for not more than five consecutive reports.

Sec. 171.821. CERTIFICATION OF ELIGIBILITY. (a) For the initial and each succeeding report in which a credit is claimed under this subchapter, the enterprise project shall file with its report, on a form provided by the comptroller, information that sufficiently demonstrates that the enterprise project is eligible for the credit.

(b) The burden of establishing entitlement to and the value of the credit is on the enterprise project.

Sec. 171.822. ASSIGNMENT PROHIBITED. An enterprise project may not convey, assign, or transfer the credit allowed under this subchapter to another entity unless all of the assets of the enterprise project are conveyed, assigned, or transferred in the same transaction.

Sec. 171.823. BIENNIAL REPORT BY COMPTROLLER. (a) Before the beginning of each regular session of the legislature, the comptroller shall submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report that states:

(1) the total amount of qualified capital investments made by enterprise projects that claim a credit under this subchapter and the average and median wages paid by those enterprise projects;

(2) the total amount of credits applied against the tax under this chapter and the amount of unused credits, including:

(A) the total amount of franchise tax due by enterprise projects claiming a credit under this subchapter before and after the application of the credit;

(B) the average percentage reduction in franchise tax due by enterprise projects claiming a credit under this subchapter;

(C) the percentage of tax credits that were awarded to enterprise projects with fewer than 100 employees; and

(D) the two-digit standard industrial classification of enterprise projects claiming a credit under this subchapter;

(3) the geographical distribution of the qualified capital investments on which tax credit claims are made under this subchapter; and

(4) the impact of the credit provided under this subchapter on employment, capital investment, personal income, and state tax revenues.

(b) The final report issued before the expiration of this subchapter must include historical information on the credit authorized under this subchapter.

(c) The comptroller may not include in the report information that is confidential by law.

(d) For purposes of this section, the comptroller may require an enterprise project that claims a credit under this subchapter to submit information, on a form provided by the comptroller, on the location of the enterprise project's capital investment in this state and any other information necessary to complete the report required under this section.

(e) The comptroller shall provide notice to the members of the legislature that the report required under this section is available on request.

Sec. 171.824. COMPTROLLER POWERS AND DUTIES. The comptroller shall adopt rules and forms necessary to implement this subchapter.

Sec. 171.825. EXPIRATION. (a) This subchapter expires December 31, 2009.

(b) The expiration of this subchapter does not affect the carryforward of a credit under Section 171.820 or those credits for which an enterprise project is eligible before the date this subchapter expires.

(c) A taxable entity may claim a credit under Subchapter Q-1, Chapter 171, Tax Code, as added by this section, only:

(1) on a franchise tax report originally due on or after January 1, 2008; and

(2) notwithstanding any other law, for qualified capital investments made on or after January 1, 2005, and before January 1, 2007.

(d) The comptroller by rule shall prescribe the manner in which a taxable entity may claim a credit for qualified capital investments made on or after January 1, 2005, and before January 1, 2007.

(e) Subchapter Q-1, Chapter 171, Tax Code, as added by this section, and Section 2303.504, Government Code, as amended by this section, do not affect taxes imposed before January 1, 2008, and the law in effect before that date is continued in effect for purposes of the liability for and collection of those taxes.

(f) Notwithstanding any other provision of this Act, this section takes effect January 1, 2008.

SECTION 17. Section 2303.505(a), Government Code, is amended to read as follows:

(a) To encourage the development of areas designated as enterprise zones, the governing body of a municipality through a program may refund its local sales and use taxes paid by a qualified business on all taxable items purchased for use at the qualified business site related to the project or activity[+

~~(1) the purchase, lease, or rental of equipment or machinery for use in an enterprise zone;~~

~~(2) the purchase of material for use in remodeling, rehabilitating, or constructing a structure in an enterprise zone;~~

~~(3) labor for remodeling, rehabilitating, or constructing a structure in an enterprise zone; and~~

~~(4) electricity and natural gas purchased and consumed in the normal course of business in the enterprise zone].~~

SECTION 18. Section 2303.516, Government Code, is amended to read as follows:

Sec. 2303.516. MONITORING QUALIFIED BUSINESS OR ENTERPRISE PROJECT COMMITMENTS. (a) The comptroller [~~bank~~] may monitor a qualified business or enterprise project to determine whether and to what extent the business or project has followed through on any commitments made by it or on its behalf under this chapter.

(b) The comptroller [~~bank~~] may determine that the business or project is not entitled to a refund or credit of state taxes under Section 2303.504 if the comptroller [~~bank~~] finds that:

(1) the business or project is not willing to cooperate with the comptroller [bank] in providing the comptroller [bank] with the information the comptroller [bank] needs to determine the state benefits [make the determination under Subsection (a)]; or

(2) the business or project has substantially failed to follow through on any commitments made by it or on its behalf under this chapter.

~~(c) [On the date on which a certificate of occupancy is issued with respect to an enterprise project or at the completion of the enterprise project designation period as indicated by the approved application, the nominating body shall monitor the qualified business to determine whether the business or project has followed through on any commitments or goals made by it or on its behalf in the designation application. On completion, the nominating body shall submit a report of its findings to the bank and comptroller.~~

~~[(d)] A qualified business may obtain a state benefit, earned through a specific enterprise project designation, on completion of an audit performed by the comptroller that will certify hiring commitments and eligible purchases made by or on behalf of a qualified business under this chapter.~~

SECTION 19. Section 2303.517, Government Code, is amended to read as follows:

Sec. 2303.517. REPORT. (a) Before obtaining a state benefit, the qualified business must submit to the comptroller [bank] a certified report of the actual number of jobs created or retained and the capital investment made at or committed to the qualified business site.

(b) Not later than the 30th day after the date the comptroller completes an enterprise project's close-out, the comptroller shall submit to the bank a report stating the actual amount of capital investment made and the actual number of jobs created or retained as a result of the enterprise project designation.

SECTION 20. Sections 151.429(a), (b), (c), and (e), Tax Code, are amended to read as follows:

(a) An enterprise project is eligible for a refund in the amount provided by this section of the taxes imposed by this chapter on purchases of all taxable items purchased for use at the qualified business site related to the project or activity [

~~(1) equipment or machinery sold to an enterprise project for use at the qualified business site;~~

~~(2) building materials sold to an enterprise project for use in remodeling, rehabilitating, or constructing a structure at the qualified business site;~~

~~(3) labor for remodeling, rehabilitating, or constructing a structure by an enterprise project at the qualified business site; and~~

~~(4) electricity and natural gas purchased and consumed in the normal course of business at the qualified business site].~~

(b) Subject to the limitations provided by Subsection (c) of this section, an enterprise project qualifies for a refund of taxes under this section based on the amount of capital investment made at the qualified business site, the project's

designation level, and the refund per job with a maximum refund to be included in a computation of a tax refund for the project. A capital investment at the qualified business site of:

(1) \$40,000 to \$399,999 will result in a refund of up to \$2,500 per job with a maximum refund of \$25,000 for the creation or retention of 10 jobs;

(2) \$400,000 to \$999,999 will result in a refund of up to \$2,500 per job with a maximum refund of \$62,500 for the creation or retention of 25 jobs;

(3) \$1,000,000 to \$4,999,999 will result in a refund of up to \$2,500 per job with a maximum refund of \$312,500 for the creation or retention of 125 jobs;

(4) \$5,000,000 to \$149,999,999 will result in a refund of up to \$2,500 per job with a maximum refund of \$1,250,000 for the creation or retention of 500 jobs;

(5) \$150,000,000 to \$249,999,999 will result in a refund of up to \$5,000 per job with a maximum refund of \$2,500,000 for the creation or retention of 500 jobs if the Texas Economic Development Bank designates the project as a double jumbo enterprise project; or

(6) \$250,000,000 or more will result in a refund of up to \$7,500 per job with a maximum refund of \$3,750,000 for the creation or retention of at least 500 jobs if the Texas Economic Development Bank designates the project as a triple jumbo enterprise project.

(c) The total amount of tax refund that an enterprise project may apply for in a state fiscal year may not exceed \$250,000, at not more than \$2,500 per job. The total amount of tax refund that a double jumbo enterprise project may apply for in a state fiscal year may not exceed \$500,000, at not more than \$5,000 per job. The total amount of tax refund that a triple jumbo enterprise project may apply for in a state fiscal year may not exceed \$750,000, at not more than \$7,500 per job. If an enterprise project, double jumbo enterprise project, or triple jumbo enterprise project qualifies in a state fiscal year for a refund of taxes in an amount in excess of the applicable limitation provided by this subsection, it may apply for a refund of those taxes in a subsequent year, subject to the applicable [~~\$250,000~~] limitation for each year. The total amount that may be refunded to:

(1) an enterprise project under this section may not exceed the amount determined by multiplying \$250,000 by the number of state fiscal years during which the enterprise project created or retained one or more jobs for qualified employees;

(2) a double jumbo enterprise project under this section may not exceed the amount determined by multiplying \$500,000 by the number of state fiscal years during which the double jumbo enterprise project created or retained one or more jobs for qualified employees; or

(3) a triple jumbo enterprise project under this section may not exceed the amount determined by multiplying \$750,000 by the number of state fiscal years during which the triple jumbo enterprise project created or retained one or more jobs for qualified employees.

(e) In this section:

(1) "Enterprise project" means a project or activity ~~[person]~~ designated by the Texas Economic Development Bank as an enterprise project under Chapter 2303, Government Code.

(2) "Qualified employee" [~~"Enterprise zone," "qualified employee,"~~] and "qualified hotel project" have the meanings assigned to those terms by Section 2303.003, Government Code.

(3) "New permanent job" has the meaning assigned by ~~[means a new employment position created by a qualified business as described by]~~ Section 2303.401 [~~2303.402~~], Government Code~~[- that:~~

~~[(A) has provided at least 1,820 hours of employment a year to a qualified employee; and~~

~~[(B) is intended to exist for at least three years after a state benefit is received under Chapter 2303, Government Code].~~

(4) "Retained job" has the meaning assigned by Section 2303.401, Government Code.

(5) "Double jumbo enterprise project" and "triple jumbo enterprise project" have the meanings assigned by Section 2303.407, Government Code.

SECTION 21. The following provisions are repealed:

(1) Section 2303.4051(d), Government Code; and

(2) Section 2303.406(e), Government Code, as added by Chapter 209, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 22. The changes in law made by this Act to Chapter 2303, Government Code, apply only to an application for a designation under the enterprise zone program under Chapter 2303, Government Code, as amended by this Act, that is filed on or after the effective date of this Act. An application for designation under the enterprise zone program that is filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 23. The changes in law made by this Act to Section 151.429, Tax Code, apply only to an application for a tax refund made on or after the effective date of this Act. An application for a tax refund made before the effective date of this Act is governed by the law in effect on the date the application was made, and the former law is continued in effect for that purpose.

SECTION 24. 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, 2007.

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

Amend **CSHB 3694** (Senate committee printing) as follows:

(1) In the recital to SECTION 1 of the bill (page 1, line 13), strike "Sections 2303.003(5-a), (7), and (8)" and substitute "Sections 2303.003(5-a) and (7)".

(2) In SECTION 1 of the bill, in amended Section 2303.003, Government Code (page 1, lines 22 through 30), strike Subdivision (8).

### 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).

#### **HB 463 - HOUSE DISCHARGES CONFEREES HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

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

**HB 463**, A bill to be entitled An Act relating to the regulation of air conditioning and refrigeration contracting; providing an administrative penalty.

Representative Flores moved to discharge the conferees and concur in the senate amendments to **HB 463**.

A record vote was requested.

The motion to discharge conferees and concur in senate amendments prevailed by (Record 1908): 140 Yeas, 1 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

Nays — Phillips.

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

Absent, Excused — Bailey; Harless.

Absent — Coleman; Dunnam; Martinez Fischer; Olivo; Veasey.

#### **Senate Committee Substitute**

**CSHB 463**, A bill to be entitled An Act relating to the regulation of air conditioning and refrigeration contracting; providing an administrative penalty.

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

SECTION 1. Section 1302.002, Occupations Code, is amended by adding Subdivisions (5-a), (5-b), and (17) to read as follows:

(5-a) "Air conditioning and refrigeration technician" means a person who assists a licensed air conditioning and refrigeration contractor in performing air conditioning and refrigeration maintenance work.

(5-b) "Certified technician" means a registered technician who has completed a certification examination.

(17) "Registered technician" means an air conditioning and refrigeration technician who is registered with the department.

SECTION 2. Section 1302.062, Occupations Code, is amended to read as follows:

Sec. 1302.062. NO LICENSE REQUIRED FOR CERTAIN ASSISTANTS. (a) A person is not required to hold a license if the person assists in air conditioning and refrigeration contracting under the supervision of a license holder.

(b) The exemption under this section does not apply to a person who assists a licensed air conditioning and refrigeration contractor in performing air conditioning and refrigeration maintenance work.

SECTION 3. Section 1302.101, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) The department may examine any criminal conviction, guilty plea, or deferred adjudication of an applicant for issuance or renewal of a license, including by obtaining any criminal history record information permitted by law.

SECTION 4. Section 1302.263, Occupations Code, is amended to read as follows:

Sec. 1302.263. LIMITATION ON LICENSE HOLDER OR REGISTERED TECHNICIAN. A person licensed under this chapter may not:

(1) perform or offer or attempt to perform an act, service, or function that is:

(A) [(+) defined as the practice of engineering under Chapter 1001, unless the person holds a license under that chapter;

(B) [(2) regulated under Chapter 113, Natural Resources Code, unless the person holds a license or is exempt by rule under that chapter; or

(C) [(3) defined as plumbing under Chapter 1301, unless the person holds a license under that chapter; or

(2) use the services of a person who is not a registered technician or a licensed air conditioning and refrigeration contractor to assist in the performance of air conditioning and refrigeration maintenance work.

SECTION 5. Section 1302.401(a), Occupations Code, is amended to read as follows:

(a) A person is subject to the denial of an application, imposition of an administrative penalty under Subchapter F, Chapter 51, or disciplinary action under Section 51.353 if the person:

(1) violates this chapter or a rule adopted under this chapter; or

(2) violates [is convicted of an offense under] a municipal ordinance adopted under Section 1302.303.

SECTION 6. Section 1302.402, Occupations Code, is amended to read as follows:

Sec. 1302.402. ADMINISTRATIVE PROCEDURES. A proceeding for the denial of a license or registration application or disciplinary action and an appeal from that proceeding are governed by Chapter 2001, Government Code.

SECTION 7. Chapter 1302, Occupations Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. AIR CONDITIONING AND REFRIGERATION  
TECHNICIANS

Sec. 1302.501. REGISTRATION REQUIRED. (a) A person may not act or offer to act as an air conditioning and refrigeration technician unless the person is registered under this subchapter.

(b) A registration is valid throughout the state.

Sec. 1302.502. RULES. The commission shall adopt rules:

(1) providing for the registration of technicians as prescribed by this subchapter; and

(2) establishing fees for issuance and renewal of a registration.

Sec. 1302.503. SUPERVISION REQUIREMENTS FOR REGISTRANTS. An air conditioning and refrigeration technician must be supervised by an air conditioning and refrigeration contractor licensed under this chapter.

Sec. 1302.504. APPLICATION; FEE. (a) An applicant for registration must submit an application on a form prescribed by the commission.

(b) The completed application must be accompanied by the application fee.

Sec. 1302.505. ISSUANCE AND TERM OF REGISTRATION. (a) On receipt of a completed application, the department shall register an applicant who meets the requirements of this subchapter.

(b) A registration is valid for one year from the date of issuance.

Sec. 1302.506. TEMPORARY REGISTRATION. (a) An applicant for registration may request a temporary registration. The executive director shall issue a temporary registration that expires on the 10th day after the date of issuance to an applicant who meets the qualifications for temporary registration.

(b) The commission shall adopt rules providing for the issuance of a temporary registration under this section, including the qualifications and fee required for the registration.

Sec. 1302.507. RENEWAL OF REGISTRATION. To renew a registration, a registered technician must:

(1) submit a renewal request on a form prescribed by the executive director; and

(2) pay the required renewal fee.

Sec. 1302.508. CERTIFIED TECHNICIAN. A registered technician may be certified by the department and use the designation "certified technician" if the registered technician:

(1) completes an application for certification on a form prescribed by the executive director;

(2) pays the application fee; and

(3) provides the department with proof that the registered technician successfully completed a nationally recognized and administered certification examination or another examination of equal or greater difficulty approved by the department.

SECTION 8. Not later than December 31, 2007, the Texas Commission of Licensing and Regulation shall adopt rules implementing Subchapter K, Chapter 1302, Occupations Code, as added by this Act.

SECTION 9. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2007.

(b) Section 1302.062, Occupations Code, as amended by this Act, and Sections 1302.501 and 1302.503, Occupations Code, as added by this Act, take effect June 30, 2008.

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

Amend **CSHB 463** (Senate committee report) as follows:

(1) Strike SECTION 2 of the bill (page 1, lines 24 through 33) and renumber remaining SECTIONS accordingly.

(2) In SECTION 7 of the bill, in added Section 1302.502, Occupations Code (page 2, line 17), strike "commission" and substitute "executive director".

(3) In SECTION 7 of the bill, in added Subsection (a), Section 1302.506, Occupations Code (page 2, line 39), strike "10th" and substitute "21st".

(4) In Subsection (b), SECTION 9, of the bill (page 2, lines 66 and 67), strike "Section 1302.062, Occupations Code, as amended by this Act, and".

### **SB 1846 - HOUSE DISCHARGES CONFEREES MOTION TO INSTRUCT CONFEREES NEW CONFEREES APPOINTED**

Representative Truitt moved to discharge the conferees on **SB 1846** and to appoint a new conference committee to **SB 1846**.

The motion prevailed.

Representative Villarreal moved to instruct the conferees on **SB 1846** to retain the substance of the McClendon amendment in the text of the conference committee report on **SB 1846**.

A record vote was requested.

The motion to instruct was lost by (Record 1909): 58 Yeas, 85 Nays, 2 Present, not voting.

Yeas — Alonzo; Anchia; Burnam; Callegari; Castro; Chavez; Coleman; Cook, R.; Crabb; Crownover; Davis, Y.; Deshotel; Dunnam; Dutton; Elkins; England; Escobar; Farias; Frost; Gallego; Garcia; Gonzalez Toureilles; Haggerty; Hamilton; Hochberg; Hodge; Homer; Hopson; King, T.; Kuempel; Martinez; Martinez Fischer; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Naishtat; Noriega; Oliveira; Olivo; Phillips; Pickett; Pierson; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Rose; Smith, T.; Strama; Talton; Thompson; Veasey; Villarreal; Vo.

Nays — Allen; Anderson; Aycock; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Chisum; Christian; Cohen; Cook, B.; Corte; Creighton; Darby; Davis, J.; Delisi; Dukes; Eiland; Eissler; Farabee; Farrar; Flores; Flynn; Gattis; Giddings; Gonzales; Goolsby; Guillen; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; Kolkhorst; Krusee; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; McCall; McClendon; Morrison; Mowery; Murphy; O'Day; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Pitts; Riddle; Smith, W.; Smithee; Solomons; Swinford; Taylor; Truitt; Van Arsdale; Vaught; West; Woolley; Zedler; Zerwas.

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

Absent, Excused — Bailey; Harless.

Absent — Driver; Geren; Straus.

### STATEMENTS OF VOTE

I was shown voting yes on Record No. 1909. I intended to vote no.

Crownover

I was shown voting no on Record No. 1909. I intended to vote yes.

Farabee

I was shown voting no on Record No. 1909. I intended to vote yes.

Guillen

I was shown voting no on Record No. 1909. I intended to vote yes.

Herrero

I was shown voting no on Record No. 1909. I intended to vote yes.

Leibowitz

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1846**: Truitt, chair; McClendon, Kolkhorst, Otto, and Keffer.

### **SB 36 - ADOPTION OF CONFERENCE COMMITTEE REPORT**

Representative Eiland submitted the conference committee report on **SB 36**.

Representative Eiland moved to adopt the conference committee report on **SB 36**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 36** prevailed by (Record 1910): 142 Yeas, 1 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver;

Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

Nays — Corte.

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

Absent, Excused — Bailey; Harless.

Absent — Martinez Fischer; Talton; Veasey.

#### STATEMENT OF VOTE

I was shown voting no on Record No. 1910. I intended to vote yes.

Corte

#### HR 2868 - ADOPTED (by Eissler)

The following privileged resolution was laid before the house:

#### HR 2868

BE IT RESOLVED by the House of Representatives of the State of Texas, 80th Legislature, Regular Session, 2007, 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 1031** (public school accountability and the administration of certain assessment instruments in public schools; providing a criminal penalty) to consider and take action on the following matters:

(1) House Rule 13, Section 9(a)(3), is suspended to permit the committee to change the text of amended Section 39.023(c), Education Code, to add the following language:

If a student retakes an end-of-course assessment instrument for a course listed in this subsection, as provided by Section 39.025, a school district is not required to use the student's performance on the subsequent administration or administrations of the assessment instrument to determine the student's final grade for the course.

Explanation: The change is necessary to clarify that a school district is not required to use a student's performance on the subsequent administration or administrations of end-of-course assessment instruments to determine a student's final grade for a course.

(2) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add new Subsections (b-1) and (b-2) to amended Section 39.025, Education Code, to read as follows:

(b-1) A school district shall provide each student who fails to achieve a score of at least 70 on an end-of-course assessment instrument with accelerated instruction in the subject assessed by the assessment instrument.

(b-2) If a school district determines that a student, on completion of grade 11, is unlikely to achieve the cumulative score requirements for one or more subjects prescribed by Subsection (a) for receiving a high school diploma, the district shall require the student to enroll in a corresponding content-area college preparatory course for which an end-of-course assessment instrument has been adopted, if available. A student who enrolls in a college preparatory course described by this subsection shall be administered an end-of-course assessment instrument for the course, with the end-of-course assessment instrument scored on a scale of 40. A student may use the student's score on the end-of-course assessment instrument for the college preparatory course towards satisfying the cumulative score requirements prescribed by Subsection (a).

Explanation: The change is necessary to require a school district to provide accelerated instruction to a student who fails to score at least 70 on an end-of-course assessment instrument and to require certain students who appear unlikely to achieve the cumulative score required for graduation to enroll in an appropriate college preparatory course.

(3) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following language in the SECTION of the bill that is renumbered in the conference committee report as SECTION 11 to read as follows:

Sec. 39.0262. ADMINISTRATION OF LOCAL ASSESSMENT INSTRUMENTS IN CERTAIN SUBJECT AREAS. (a) In a subject area for which assessment instruments are administered under Section 39.023, a school district may not administer local assessment instruments to any student on more than 10 percent of the instructional days in any school year.

(b) The prohibition prescribed by this section does not apply to the administration of a college preparation assessment instrument, an advanced placement test, an international baccalaureate examination, or an assessment instrument administered under Section 39.023.

Explanation: The change is necessary to prohibit a school district from administering certain assessment instruments to a student on more than 10 percent of the instructional days in a school year.

**HR 2868** was adopted.

### **SB 1031 - ADOPTION OF CONFERENCE COMMITTEE REPORT**

Representative Eissler submitted the conference committee report on **SB 1031**.

Representative Eissler moved to adopt the conference committee report on **SB 1031**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 1031** prevailed by (Record 1911): 141 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycok; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Tourelles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodges; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Vo; West; Woolley; Zedler; Zerwas.

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

Absent, Excused — Bailey; Harless.

Absent — Bolton; Castro; Dunnam; Olivo; Villarreal.

#### STATEMENTS OF VOTE

When Record No. 1911 was taken, I was in the house but away from my desk. I would have voted yes.

Bolton

When Record No. 1911 was taken, I was absent because of important business in the district. Had I been present I would have voted yes.

Harless

#### **SB 1714 - ADOPTION OF CONFERENCE COMMITTEE REPORT**

Representative Smithee submitted the conference committee report on **SB 1714**.

Representative Smithee moved to adopt the conference committee report on **SB 1714**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 1714** prevailed by (Record 1912): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Berman; Bohac; Bolton; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent, Excused — Bailey; Harless.

Absent — Bonnen; Jones; Olivo.

### **SB 1383 - ADOPTION OF CONFERENCE COMMITTEE REPORT**

Representative Smithee submitted the conference committee report on **SB 1383**.

Representative Smithee moved to adopt the conference committee report on **SB 1383**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 1383** prevailed by (Record 1913): 136 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Berman; Bohac; Bolton; Bonnen; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hardcastle; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Merritt; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Noriega; O'Day; Oliveira; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pierson; Pitts; Puente; Quintanilla; Raymond;

Riddle; Ritter; Rodriguez; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent, Excused — Bailey; Harless.

Absent — Branch; Dukes; Hamilton; Hancock; Menendez; Naishtat; Olivo; Pickett; Rose; Talton.

**HR 2682 - READ**  
**(by Goolsby)**

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

**HR 2682**, Honoring Patricia A. Liendo on her graduation from The University of Texas at Austin.

**HR 2879 - NOTICE OF INTRODUCTION**

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 2879**, suspending the limitations on the conferees for **HB 1251**.

**HB 3057 - WITH SENATE AMENDMENTS**

Representative Callegari moved to suspend all necessary rules to call up with senate amendments for consideration at this time,

**HB 3057**, A bill to be entitled An Act relating to the acquisition of real property for public use.

**HB 3057 - POINT OF ORDER**

Representatives Dunnam and Y. Davis raised a point of order against further consideration of **HB 3057** under Rule 11, Section 2 of the House Rules on the grounds that the senate amendments are not germane to the bill.

The chair sustained the point of order.

(Gattis in the chair)

**HB 3678 - VOTE RECONSIDERED**

Representative Eiland moved to reconsider the vote by which the motion to suspend all necessary rules to take up and consider **HB 3678** with senate amendments was lost.

A record vote was requested.

The vote of the house was taken on the motion to reconsider **HB 3678** with senate amendments and the vote was announced yeas 94, nays 45.

A verification of the vote was requested and was granted.

The roll of those voting yea and nay was again called and the verified vote resulted, as follows (Record 1914): 94 Yeas, 44 Nays, 2 Present, not voting.

Yeas — Anderson; Aycock; Berman; Bohac; Bonnen; Brown, B.; Brown, F.; Callegari; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Delisi; Deshotel; Driver; Eiland; Eissler; Elkins; England; Farabee; Flynn; Frost; Geren; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hilderbran; Hill; Homer; Hopson; Howard, C.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Lucio; Madden; McCall; McReynolds; Menendez; Merritt; Miller; Morrison; Murphy; O'Day; Olivo; Orr; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pitts; Quintanilla; Riddle; Ritter; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Swinford; Talton; Taylor; Truitt; Turner; Van Arsdale; Vaught; Woolley; Zedler; Zerwas.

Nays — Allen; Alonzo; Bolton; Burnam; Castro; Chavez; Cohen; Coleman; Davis, Y.; Dukes; Dunnam; Dutton; Escobar; Farias; Farrar; Flores; Gallego; Garcia; Giddings; Gonzales; Gonzalez Toureilles; Hernandez; Herrero; Hochberg; Hodge; Howard, D.; Leibowitz; Mallory Caraway; Martinez; Martinez Fischer; McClendon; Miles; Moreno; Naishtat; Noriega; Oliveira; Ortiz; Pierson; Puente; Raymond; Rodriguez; Strama; Veasey; Villarreal.

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

Absent, Excused — Bailey; Harless.

Absent — Anchia; Branch; Macias; Mowery; Straus; Thompson; Vo; West.

The chair stated that the motion to reconsider prevailed by the above vote.

### STATEMENTS OF VOTE

When Record No. 1914 was taken, I was absent because of important business in the district. Had I been present I would have voted yes.

Harless

I was shown voting no on Record No. 1914. I intended to vote yes.

Raymond

### LEAVES OF ABSENCE GRANTED

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

Anchia on motion of Strama.

The following members were granted leaves of absence for the remainder of today because of important business:

Branch on motion of Hamilton.

Thompson on motion of Alonzo.

Vo on motion of Ortiz.

The following members were granted leaves of absence for the remainder of today because of important business in the district:

Macias on motion of Hughes.

West on motion of Pitts.

**HB 3678 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative C. Howard called up with senate amendments for consideration at this time,

**HB 3678**, A bill to be entitled An Act relating to voluntary student expression of religious viewpoints in public schools.

**HB 3678 - STATEMENT OF LEGISLATIVE INTENT**

REPRESENTATIVE HOCHBERG: Charlie, what are the senate amendments? You don't have to read them in detail, just tell us what the amendments are.

REPRESENTATIVE C. HOWARD: The essence of them is one just duplicates one line in the original bill with what's in the model policy. The second one is, there was some confusion about whether students had the right to speak at all events and not—it said they did—and this clarifies this. It says no, they do not. It's only when the school specifies the event, and that the school is in control of that. The third removes the language that was put in by the house amendment.

HOCHBERG: Okay, Mr. Howard, when the bill was before us on the floor, we debated a number of amendments, and for, I believe, every one of those amendments, you said if we made any changes at all to what was in front of us, the bill became unconstitutional. Why are you now accepting senate amendments—

C. HOWARD: I said that if anything changed the context of it. What we did, like we said, the first one, all it did was just make a correction of a couple of words, so that the bill mirrored the policy. That's what the first one was that I mentioned to you. The second one removes the language that we talked about, and the third clarifies, and I think I used that word, that the school districts have the ability to determine when the students have the right to speak their viewpoint.

HOCHBERG: Mr. Howard, I'm looking at the side-by-side that is on TLIS, which I assume is the same side-by-side you've seen, or whatever comparison, and it changes the language of the model policy from the house version, which says the district creates an opportunity for students to speak at various events, which it says, "such as sports events, assemblies, opening announcements," it changes that to, "student speakers shall introduce football games," and then another—

C. HOWARD: Two events, two events.

HOCHBERG: What?

C. HOWARD: In the original, I believe it said that there was a whole litany of the events that the students would be able—

HOCHBERG: But those were may's, and this has become a shall. So in your new model policy, school districts will be required, if they adopt the model policy, to provide a limited forum for student speakers to speak their minds at football games and other things on that list.

C. HOWARD: And at the beginning of the school day. These two occasions have traditionally been introduced by student leaders throughout the history of public schools.

HOCHBERG: So they will then, student leaders, student speakers, will be required to introduce every football game, and at the beginning of the day, in a public forum, where they can pretty much say anything they want, within the realm of the topics that you list.

C. HOWARD: That is correct. Thank you.

HOCHBERG: Mr. Howard, the purpose of this bill is to make sure that they know that they can express their religious viewpoints at limited public forums that the school sets up. If we accept the senate amendments, you are mandating what that policy is, you're mandating what those events are, and you're providing a forum for students to say pretty much anything they want, as long as they're within the topic of football, or something like that.

C. HOWARD: The schools have the right to tell them what the subject is, Mr.—

HOCHBERG: They have the right to tell them what the subject is—

C. HOWARD: That is correct.

HOCHBERG: But they do not have the right to either control the content, or tell them when they've gone over a line, except the line that you provided that's in the bill. Is that correct? And you're now specifying to the school district what events those are going to be, from the state.

C. HOWARD: To have a student speaker.

HOCHBERG: To have a student speaker.

C. HOWARD: Right.

HOCHBERG: You are requiring them to have a student speaker at football games and to give the announcements, and you're telling them which student speakers they have to select, right?

C. HOWARD: That's in the original bill.

HOCHBERG: Okay, because when we debated this last time, I thought it was very important that you said that the schools had discretion on which things were going to be public forums, but you've taken that discretion away from the school districts.

C. HOWARD: They can have all the public forums they choose.

HOCHBERG: As long as they have at least—

C. HOWARD: They have two.

HOCHBERG: As long as they have at least those two.

C. HOWARD: Yes, sir.

HOCHBERG: So your intent is to provide at least two opportunities for students to express their religious viewpoints to other students who are in the school. Is that correct?

C. HOWARD: Mr. Hochberg—

HOCHBERG: Is that your intent?

C. HOWARD: Our intent is for them to express their viewpoints. It doesn't necessarily have to be a religious viewpoint. It can be a secular viewpoint.

HOCHBERG: But you're bringing this bill because you want them to know that it may be a religious viewpoint.

C. HOWARD: The model policy is optional, if you'll recall.

HOCHBERG: I'm sorry?

C. HOWARD: The model policy that's in the bill, that is an optional policy, and the school does not have to adopt that policy. They can adopt any policy they want to.

HOCHBERG: They have to, they can adopt any policy they want to, except that the only one that you say, that you will tell them, meets the law you're passing is the model you've provided. You haven't given them any other example.

C. HOWARD: No, no, no. What the bill says, if they adopt the model policy, there will be safe harbor—

HOCHBERG: From what?

C. HOWARD: From litigation by the parents or the students themselves. Part of the problem—

HOCHBERG: No, sir—

C. HOWARD: I disagree with you, Mr. Hochberg. You asked me a question, I wish you'd let me answer. Okay, because part of the purpose of this bill is to try to prevent litigation, and that's the whole idea here, so that the school districts will know, and the parents will know, what the case law says, and what the constitution of the United States says, so that we will have some policy there. The policy can be adopted by the school district. They do not have to adopt that policy.

HOCHBERG: Mr. Howard—

C. HOWARD: The whole idea is to give them a model policy to try to provide safe harbor for them, but they can develop their own.

HOCHBERG: Mr. Howard, will you tell me in the bill where they have a safe harbor by adopting this policy from lawsuits? I believe that this bill says that they will be in compliance with the law that you're passing, if they adopt this policy.

C. HOWARD: That is correct, and my understanding is that it will provide safe harbor for them so that they—

HOCHBERG: And so why did your supporters, and your drafters, put in a specific provision in the senate that specifically allowed for lawsuits to be filed, based on this bill, and in fact awarded attorney's fees to those lawyers? They must have thought there were some lawsuits to be had.

C. HOWARD: I'm not aware of that.

HOCHBERG: You're not aware that that's what happened in the bill that was filed, that was offered in the senate and senate committee?

C. HOWARD: Well, that was not the senate amendment that was passed with this bill.

HOCHBERG: I'm sorry, that—

C. HOWARD: That was offered, but I believe that that portion of it was removed. That portion was removed in the senate.

HOCHBERG: That portion was removed in the senate over the objections of the senate sponsor, and over the objections of the author of the bill.

C. HOWARD: Mr. Hochberg, the motion that I have made was adopted by the senate, 28-2. I think that's a pretty good indication that they approved what is in the senate amendment, and that's what I am asking this body to concur with.

HOCHBERG: Well, Mr. Howard, I would say that if two people in the senate voted against, that's pretty unusual for the senate. That's a lot of discord for the senate.

### REMARKS ORDERED PRINTED

Representative Hochberg moved to print remarks between Representative C. Howard and Representative Hochberg.

The motion prevailed.

Representative C. Howard moved to suspend all necessary rules and concur in the senate amendments to **HB 3678**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 1915): 107 Yeas, 28 Nays, 2 Present, not voting.

Yeas — Anderson; Aycock; Berman; Bohac; Bonnen; Brown, B.; Brown, F.; Callegari; Chavez; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Delisi; Deshotel; Driver; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Flores; Flynn; Frost; Gallego; Geren; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Herrero; Hilderbran; Hill; Homer; Hopson; Howard, C.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Madden; Martinez; McCall; McClendon; McReynolds; Merritt; Miller; Morrison;

Murphy; O'Day; Oliveira; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Swinford; Talton; Taylor; Truitt; Turner; Van Arsdale; Vaught; Woolley; Zedler; Zerwas.

Nays — Allen; Alonzo; Bolton; Burnam; Castro; Cohen; Coleman; Davis, Y.; Dukes; Dutton; Farrar; Garcia; Giddings; Hernandez; Hochberg; Hodge; Howard, D.; Mallory Caraway; Martinez Fischer; Miles; Moreno; Naishtat; Noriega; Olivo; Rodriguez; Strama; Veasey; Villarreal.

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

Absent, Excused — Anchia; Bailey; Branch; Harless; Macias; Thompson; Vo; West.

Absent — Dunnam; Menendez; Mowery; Pierson; Straus.

### STATEMENTS OF VOTE

When Record No. 1915 was taken, I was absent because of important business in the district. Had I been present I would have voted yes.

Harless

When Record No. 1915 was taken, my vote failed to register. I would have voted yes.

Pierson

### Senate Committee Substitute

**CSHB 3678**, A bill to be entitled An Act relating to voluntary student expression of religious viewpoints in public schools.

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

SECTION 1. This Act may be cited as the "Religious Viewpoints Antidiscrimination Act" or the "Schoolchildren's Religious Liberties Act."

SECTION 2. Chapter 25, Education Code, is amended by adding Subchapter E to read as follows:

#### SUBCHAPTER E. STUDENT EXPRESSION OF RELIGIOUS VIEWPOINTS

Sec. 25.151. STUDENT EXPRESSION. A school district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject.

#### Sec. 25.152. LIMITED PUBLIC FORUM; SCHOOL DISTRICT POLICY.

(a) To ensure that the school district does not discriminate against a student's publicly stated voluntary expression of a religious viewpoint, if any, and to eliminate any actual or perceived affirmative school sponsorship or attribution to the district of a student's expression of a religious viewpoint, if any, a school district shall adopt a policy, which must include the establishment of a limited

public forum for student speakers at all school events at which a student is to publicly speak. The policy regarding the limited public forum must also require the school district to:

(1) provide the forum in a manner that does not discriminate against a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject;

(2) provide a method, based on neutral criteria, for the selection of student speakers at school events and graduation ceremonies;

(3) ensure that a student speaker does not engage in obscene, vulgar, offensively lewd, or indecent speech; and

(4) state, in writing, orally, or both, that the student's speech does not reflect the endorsement, sponsorship, position, or expression of the district.

(b) The school district disclaimer required by Subsection (a)(4) must be provided at all graduation ceremonies. The school district must also continue to provide the disclaimer at any other event in which a student speaks publicly for as long as a need exists to dispel confusion over the district's nonsponsorship of the student's speech.

(c) Student expression on an otherwise permissible subject may not be excluded from the limited public forum because the subject is expressed from a religious viewpoint.

Sec. 25.153. RELIGIOUS EXPRESSION IN CLASS ASSIGNMENTS. Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions. Homework and classroom assignments must be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school district. Students may not be penalized or rewarded on account of the religious content of their work.

Sec. 25.154. FREEDOM TO ORGANIZE RELIGIOUS GROUPS AND ACTIVITIES. Students may organize prayer groups, religious clubs, "see you at the pole" gatherings, or other religious gatherings before, during, and after school to the same extent that students are permitted to organize other noncurricular student activities and groups. Religious groups must be given the same access to school facilities for assembling as is given to other noncurricular groups without discrimination based on the religious content of the students' expression. If student groups that meet for nonreligious activities are permitted to advertise or announce meetings of the groups, the school district may not discriminate against groups that meet for prayer or other religious speech. A school district may disclaim school sponsorship of noncurricular groups and events in a manner that neither favors nor disfavors groups that meet to engage in prayer or religious speech.

Sec. 25.155. ADOPTION OF POLICY. A school district shall adopt and implement a local policy regarding a limited public forum and voluntary student expression of religious viewpoints. If a school district voluntarily adopts and

follows the model policy governing voluntary religious expression in public schools as provided by Section 25.156, the district is in compliance with the provisions of this subchapter covered by the model policy.

Sec. 25.156. MODEL POLICY GOVERNING VOLUNTARY RELIGIOUS EXPRESSION IN PUBLIC SCHOOLS. In this section, "model policy" means a local policy adopted by the school district that is substantially identical to the following:

#### ARTICLE I

##### STUDENT EXPRESSION OF RELIGIOUS VIEWPOINTS

The school district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject.

#### ARTICLE II

##### STUDENT SPEAKERS AT NONGRADUATION EVENTS

The school district hereby creates a limited public forum for student speakers at all school events at which a student is to publicly speak. For each speaker, the district shall set a maximum time limit reasonable and appropriate to the occasion. Student speakers shall introduce:

- (1) football games;
- (2) any other athletic events designated by the district;
- (3) opening announcements and greetings for the school day; and
- (4) any additional events designated by the district, which may include,

without limitation, assemblies and pep rallies.

The forum shall be limited in the manner provided by this article.

Only those students in the highest two grade levels of the school and who hold one of the following positions of honor based on neutral criteria are eligible to use the limited public forum: student council officers, class officers of the highest grade level in the school, captains of the football team, and other students holding positions of honor as the school district may designate.

An eligible student shall be notified of the student's eligibility, and a student who wishes to participate as an introducing speaker shall submit the student's name to the student council or other designated body during an announced period of not less than three days. The announced period may be at the beginning of the school year, at the end of the preceding school year so student speakers are in place for the new year, or, if the selection process will be repeated each semester, at the beginning of each semester or at the end of the preceding semester so speakers are in place for the next semester. The names of the volunteering student speakers shall be randomly drawn until all names have been selected, and the names shall be listed in the order drawn. Each selected student will be matched chronologically to the event for which the student will be giving the introduction. Each student may speak for one week at a time for all introductions of events that week, or rotate after each speaking event, or otherwise as

determined by the district. The list of student speakers shall be chronologically repeated as needed, in the same order. The district may repeat the selection process each semester rather than once a year.

The subject of the student introductions must be related to the purpose of the event and to the purpose of marking the opening of the event, honoring the occasion, the participants, and those in attendance, bringing the audience to order, and focusing the audience on the purpose of the event. The subject must be designated, a student must stay on the subject, and the student may not engage in obscene, vulgar, offensively lewd, or indecent speech. The school district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject.

For as long as there is a need to dispel confusion over the nonsponsorship of the student's speech, at each event in which a student will deliver an introduction, a disclaimer shall be stated in written or oral form, or both, such as, "The student giving the introduction for this event is a volunteering student selected on neutral criteria to introduce the event. The content of the introduction is the private expression of the student and does not reflect the endorsement, sponsorship, position, or expression of the school district."

Certain students who have attained special positions of honor in the school have traditionally addressed school audiences from time to time as a tangential component of their achieved positions of honor, such as the captains of various sports teams, student council officers, class officers, homecoming kings and queens, prom kings and queens, and the like, and have attained their positions based on neutral criteria. Nothing in this policy eliminates the continuation of the practice of having these students, irrespective of grade level, address school audiences in the normal course of their respective positions. The school district shall create a limited public forum for the speakers and shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject.

### ARTICLE III

#### STUDENT SPEAKERS AT GRADUATION CEREMONIES

The school district hereby creates a limited public forum consisting of an opportunity for a student to speak to begin graduation ceremonies and another student to speak to end graduation ceremonies. For each speaker, the district shall set a maximum time limit reasonable and appropriate to the occasion.

The forum shall be limited in the manner provided by this article.

Only students who are graduating and who hold one of the following neutral criteria positions of honor shall be eligible to use the limited public forum: student council officers, class officers of the graduating class, the top three academically ranked graduates, or a shorter or longer list of student leaders as the

school district may designate. A student who will otherwise have a speaking role in the graduation ceremonies is ineligible to give the opening and closing remarks. The names of the eligible volunteering students will be randomly drawn. The first name drawn will give the opening and the second name drawn will give the closing.

The topic of the opening and closing remarks must be related to the purpose of the graduation ceremony and to the purpose of marking the opening and closing of the event, honoring the occasion, the participants, and those in attendance, bringing the audience to order, and focusing the audience on the purpose of the event.

In addition to the students giving the opening and closing remarks, certain other students who have attained special positions of honor based on neutral criteria, including, without limitation, the valedictorian, will have speaking roles at graduation ceremonies. For each speaker, the school district shall set a maximum time limit reasonable and appropriate to the occasion and to the position held by the speaker. For this purpose, the district creates a limited public forum for these students to deliver the addresses. The subject of the addresses must be related to the purpose of the graduation ceremony, marking and honoring the occasion, honoring the participants and those in attendance, and the student's perspective on purpose, achievement, life, school, graduation, and looking forward to the future.

The subject must be designated for each student speaker, the student must stay on the subject, and the student may not engage in obscene, vulgar, offensively lewd, or indecent speech. The school district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject.

A written disclaimer shall be printed in the graduation program that states, "The students who will be speaking at the graduation ceremony were selected based on neutral criteria to deliver messages of the students' own choices. The content of each student speaker's message is the private expression of the individual student and does not reflect any position or expression of the school district or the board of trustees, or the district's administration, or employees of the district, or the views of any other graduate. The contents of these messages were prepared by the student volunteers, and the district refrained from any interaction with student speakers regarding the student speakers' viewpoints on permissible subjects."

#### ARTICLE IV

##### RELIGIOUS EXPRESSION IN CLASS ASSIGNMENTS

Students may express the students' beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of the students' submission. Homework and classroom work shall be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school.

Students may not be penalized or rewarded on account of religious content. If a teacher's assignment involves writing a poem, the work of a student who submits a poem in the form of a prayer (for example, a psalm) should be judged on the basis of academic standards, including literary quality, and not penalized or rewarded on account of its religious content.

#### ARTICLE V

#### FREEDOM TO ORGANIZE RELIGIOUS GROUPS AND ACTIVITIES

Students may organize prayer groups, religious clubs, "see you at the pole" gatherings, and other religious gatherings before, during, and after school to the same extent that students are permitted to organize other noncurricular student activities and groups. Religious groups must be given the same access to school facilities for assembling as is given to other noncurricular groups, without discrimination based on the religious content of the group's expression. If student groups that meet for nonreligious activities are permitted to advertise or announce the groups' meetings, for example, by advertising in a student newspaper, putting up posters, making announcements on a student activities bulletin board or public address system, or handing out leaflets, school authorities may not discriminate against groups that meet for prayer or other religious speech. School authorities may disclaim sponsorship of noncurricular groups and events, provided they administer the disclaimer in a manner that does not favor or disfavor groups that meet to engage in prayer or other religious speech.

SECTION 3. This Act applies beginning with the 2007-2008 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, 2007.

#### **SCR 82 - ADOPTED (Murphy - House Sponsor)**

Representative Murphy moved to suspend all necessary rules to take up and consider at this time **SCR 82**.

The motion prevailed.

The following resolution was laid before the house:

**SCR 82**, In memory of Allie Pearl Haney of Roscoe.

**SCR 82** was read and was unanimously adopted by a rising vote.

#### **HR 2854 - VOTE RECONSIDERED**

Representative W. Smith moved to reconsider the vote by which **HR 2854** failed of adoption.

A record vote was requested.

The motion to reconsider prevailed by (Record 1916): 94 Yeas, 40 Nays, 3 Present, not voting.

Yeas — Allen; Anderson; Aycock; Berman; Bohac; Bonnen; Brown, B.; Brown, F.; Callegari; Chavez; Chisum; Christian; Cohen; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Delisi; Driver; Dukes; Dutton; Eissler; Elkins; England; Farabee; Flores; Flynn; Frost; Garcia; Geren; Giddings; Goolsby; Guillen; Haggerty; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hilderbran; Hopson; Howard, C.; Hughes; Isett; Jackson; King, P.; King, S.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Lucio; Madden; McCall; McClendon; Merritt; Miles; Miller; Morrison; Murphy; O'Day; Orr; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Riddle; Ritter; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Taylor; Truitt; Turner; Van Arsdale; Woolley; Zedler; Zerwas.

Nays — Alonzo; Bolton; Burnam; Castro; Coleman; Davis, Y.; Dunnam; Eiland; Escobar; Farias; Farrar; Gallego; Gonzales; Gonzalez Toureilles; Hamilton; Hernandez; Herrero; Hill; Hochberg; Hodge; Howard, D.; Jones; Keffer; King, T.; Leibowitz; Mallory Caraway; Martinez; Martinez Fischer; McReynolds; Moreno; Naishtat; Oliveira; Olivo; Ortiz; Raymond; Rodriguez; Talton; Vaught; Veasey; Villarreal.

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

Absent, Excused — Anchia; Bailey; Branch; Harless; Macias; Thompson; Vo; West.

Absent — Deshotel; Homer; Menendez; Mowery; Pierson.

**HR 2854 - ADOPTED**  
**(by P. King)**

The following privileged resolution was laid before the house:

**HR 2854**

BE IT RESOLVED by the House of Representatives of the State of Texas, 80th Legislature, Regular Session, 2007, 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 482** (competition and customer choice in the retail electric power market) 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 sections to the bill, to amend Sections 15.023(b) and (d), Utilities Code, and Section 15.024(f), Utilities Code, to read:

SECTION 1. Sections 15.023(b) and (d), Utilities Code, are amended to read as follows:

(b) The penalty for a violation may be in an amount not to exceed \$25,000 except as provided by Section 39.157. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(d) The classification system established under Subsection (c) shall provide that a penalty in an amount that exceeds \$5,000 may be assessed only if the violation is included in the highest class of violations in the classification system. Violations of Section 39.157 shall be included in the highest class of violations.

SECTION 2. Section 15.024(f), Utilities Code, is amended to read as follows:

(f) If the person requests a hearing or fails to timely respond to the notice, the executive director shall set a hearing and give notice of the hearing to the person. The hearing shall be held in accordance with Subchapter B, Chapter 14 ~~[by an administrative law judge of the State Office of Administrative Hearings]~~. For hearings conducted by the State Office of Administrative Hearings, the ~~[The]~~ administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commission a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the commission by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

Explanation: The addition of those sections to the bill is necessary both to clarify the applicability of Sections 15.023 and 15.024, Utilities Code, when a penalty may be imposed as provided by Section 39.157, Utilities Code, as amended by the bill, and to clarify the authority of the Public Utility Commission of Texas to conduct hearings in administrative penalty matters.

(2) House Rule 13, Section 9(a)(2), is suspended to permit the committee to omit amended Section 39.101(h), Utilities Code, from the bill. Explanation: The change is necessary to retain the current law's flexibility and certainty concerning the period for deferrals of electric utility bill payments because of extreme weather.

Explanation: The change is necessary to retain the current law's flexibility and certainty concerning the period for deferrals of electric utility bill payments because of extreme weather.

(3) House Rule 13, Sections 9(a)(3) and (4), are suspended to permit the committee to add the following Subsection (i) to added Section 39.1015, Utilities Code, to read:

(i) This section does not apply to metered electric service sold to residential customers on a prepaid basis.

Explanation: The change is necessary to prevent the application of the prohibition on disconnecting certain customers' electric service, intended to apply to customers with whom arrangements are made for periodic payments for service, to differently situated prepaid electric service customers.

(4) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following sections to the bill, to amend Sections 39.262(c), 39.301, 39.302(4), 39.303(a), and 39.303(b), Utilities Code, to read:

SECTION 15. Section 39.262(c), Utilities Code, is amended to read as follows

(c) After January 10, 2004, at a schedule and under procedures to be determined by the commission, each transmission and distribution utility, its affiliated retail electric provider, and its affiliated power generation company shall jointly file to finalize stranded costs under Subsections (h) and (i) and reconcile those costs with the estimated stranded costs used to develop the competition transition charge in the proceeding held under Section 39.201. Any

resulting difference shall be applied to the nonbypassable delivery rates of the transmission and distribution utility, except that at the utility's option, any or all of the amounts recovered under this section [~~remaining stranded costs~~] may be securitized under Subchapter G.

SECTION 16. Section 39.301, Utilities Code, is amended to read as follows:

Sec. 39.301. PURPOSE. The purpose of this subchapter is to enable utilities to use securitization financing to recover regulatory assets, all other amounts determined under Section 39.262, and any amounts being recovered under a competition transition charge determined as a result of the proceedings under Sections 39.201 and 39.262. This [~~and stranded costs, because this~~] type of debt will lower the carrying costs of the assets relative to the costs that would be incurred using conventional utility financing methods. The proceeds of the transition bonds shall be used solely for the purposes of reducing the amount of recoverable regulatory assets and other amounts [stranded costs], as determined by the commission in accordance with this chapter, through the refinancing or retirement of utility debt or equity. The commission shall ensure that securitization provides tangible and quantifiable benefits to ratepayers, greater than would have been achieved absent the issuance of transition bonds. The commission shall ensure that the structuring and pricing of the transition bonds result in the lowest transition bond charges consistent with market conditions and the terms of the financing order. The amount securitized may not exceed the present value of the revenue requirement over the life of the proposed transition bond associated with the regulatory assets or other amounts [~~stranded costs~~] sought to be securitized. The present value calculation shall use a discount rate equal to the proposed interest rate on the transition bonds.

SECTION 17. Section 39.302(4), Utilities Code, is amended to read as follows:

(4) "Qualified costs" means 100 percent of an electric utility's regulatory assets and 75 percent of its recoverable costs determined by the commission under Section 39.201 and any remaining amounts [~~stranded costs~~] determined under Section 39.262 together with the costs of issuing, supporting, and servicing transition bonds and any costs of retiring and refunding the electric utility's existing debt and equity securities in connection with the issuance of transition bonds. The term includes the costs to the commission of acquiring professional services for the purpose of evaluating proposed transactions under Section 39.201 and this subchapter.

SECTION 18. Sections 39.303(a) and (b), Utilities Code, are amended to read as follows:

(a) The commission shall adopt a financing order, on application of a utility to recover the utility's regulatory assets and other amounts determined [~~eligible stranded costs~~] under Section 39.201 or 39.262, on making a finding that the total amount of revenues to be collected under the financing order is less than the revenue requirement that would be recovered over the remaining life of the regulatory assets or other amounts [~~stranded costs~~] using conventional financing methods and that the financing order is consistent with the standards in Section 39.301.

(b) The financing order shall detail the amount of regulatory assets and other amounts [~~stranded costs~~] to be recovered and the period over which the nonbypassable transition charges shall be recovered, which period may not exceed 15 years. If an amount determined under Section 39.262 is subject to judicial review at the time of the securitization proceeding, the financing order shall include an adjustment mechanism requiring the utility to adjust its rates, other than transition charges, or provide credits, other than credits to transition charges, in a manner that would refund over the remaining life of the transition bonds any overpayments resulting from securitization of amounts in excess of the amount resulting from a final determination after completion of all appellate reviews. The adjustment mechanism may not affect the stream of revenue available to service the transition bonds. An adjustment may not be made under this subsection until all appellate reviews, including, if applicable, appellate reviews following a commission decision on remand of its original orders, have been completed.

Explanation: The addition of those sections to the bill is necessary to enable certain utilities to use securitization financing to recover, in addition to regulatory assets, amounts determined in a true-up proceeding under Subchapter F, Chapter 39, Utilities Code, and amounts being recovered under a competition transition charge under Subchapter E or F, Chapter 39, Utilities Code.

A record vote was requested.

**HR 2854** was adopted by (Record 1917): 100 Yeas, 35 Nays, 3 Present, not voting.

Yeas — Allen; Anderson; Aycock; Berman; Bohac; Bonnen; Brown, B.; Brown, F.; Callegari; Chisum; Christian; Cohen; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Delisi; Driver; Dukes; Dutton; Eissler; Elkins; England; Farabee; Flores; Flynn; Frost; Garcia; Geren; Giddings; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Heflin; Hilderbran; Hill; Hochberg; Homer; Hopson; Howard, C.; Hughes; Isett; Jackson; Keffer; King, P.; King, S.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Lucio; McCall; McClendon; Menendez; Merritt; Miles; Miller; Morrison; Murphy; O'Day; Orr; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Taylor; Truitt; Turner; Van Arsdale; Vaught; Woolley; Zedler; Zerwas.

Nays — Alonzo; Bolton; Burnam; Castro; Chavez; Coleman; Davis, Y.; Dunnam; Escobar; Farias; Farrar; Gallego; Gonzales; Gonzalez Toureilles; Hernandez; Herrero; Hodge; Howard, D.; Jones; King, T.; Leibowitz; Mallory Caraway; Martinez; Martinez Fischer; McReynolds; Moreno; Naishtat; Oliveira; Olivo; Ortiz; Pierson; Rodriguez; Talton; Veasey; Villarreal.

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

Absent, Excused — Anchia; Bailey; Branch; Harless; Macias; Thompson; Vo; West.

Absent — Deshotel; Eiland; Madden; Mowery.

**SCR 80 - ADOPTED**  
**(Hopson - House Sponsor)**

Representative Hopson moved to suspend all necessary rules to take up and consider at this time **SCR 80**.

The motion prevailed.

The following resolution was laid before the house:

**SCR 80**, Commending the Texas State Board of Pharmacy for 100 years of exemplary service to the citizens of Texas.

**SCR 80** was adopted.

**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. 5 and 6).

**ADJOURNMENT**

Representative Hughes moved that the house adjourn until 2 p.m. tomorrow in memory of Virgil Galyean of Alba.

The motion prevailed.

The house accordingly, at 7:59 p.m., adjourned until 2 p.m. tomorrow.

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**ADDENDUM**

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**SIGNED BY THE SPEAKER**

The following bills and resolutions were today signed in the presence of the house by the speaker:

**House List No. 47**

**HB 53, HB 550, HB 589, HB 1038, HB 1044, HB 1250, HB 1460, HB 1633, HB 1977, HB 2004, HB 2106, HB 2210, HB 2261, HB 2510, HB 2564, HB 2734, HB 2944, HB 3232, HB 3552, HB 4045, HB 4069, HB 4110, HCR 96, HCR 260**

**Senate List No. 52**

**SB 792**

**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  
Saturday, May 26, 2007

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 776** (30 Yeas, 0 Nays)

THE SENATE HAS GRANTED THE REQUEST OF THE HOUSE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

**HB 1386**

Senate Conferees: Fraser - Chair/Carona/Eltife/Watson/West, Royce

**HB 2094**

Senate Conferees: Carona - Chair/Ellis/Estes/Wentworth/Whitmire

**HB 2207**

Senate Conferees: Watson - Chair/Carona/Duncan/Harris/Hinojosa

**HB 3693**

Senate Conferees: Fraser - Chair/Estes/Seliger/Shapiro/Van de Putte

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**HB 126** (30 Yeas, 0 Nays)

**HB 1060** (30 Yeas, 0 Nays)

**HB 1498** (30 Yeas, 0 Nays)

**HB 1973** (30 Yeas, 0 Nays)

**HB 3849** (30 Yeas, 0 Nays)

**SB 36** (30 Yeas, 0 Nays)

**SB 759** (30 Yeas, 0 Nays)

**SB 993** (30 Yeas, 0 Nays)

**SB 1383** (30 Yeas, 0 Nays)

**SB 1714** (30 Yeas, 0 Nays)

Respectfully,  
Patsy Spaw

Secretary of the Senate

**Message No. 2**

MESSAGE FROM THE SENATE

SENATE CHAMBER

Austin, Texas

Saturday, May 26, 2007 - 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 253**                                      Kuempel                                      SPONSOR: Brimer  
Honoring Thomas L. Johnson, Sr., on his induction into the Texas Transportation Institute Hall of Honor.

**HCR 265**                                      Dukes    SPONSOR: Watson  
Honoring Major James R. Stegall (Ret.) of Austin for his service to his country and recommending that he be inducted into the Texas Aviation Hall of Fame.

**HCR 273**                                      Garcia    SPONSOR: Hinojosa  
Paying tribute to the life of Dr. Hector P. Garcia on the third Wednesday of September in 2007 and in 2008.

THE SENATE HAS CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

**SB 839**    (30 Yeas, 0 Nays)

**SB 1232**    (30 Yeas, 0 Nays)

**SB 1833**    (30 Yeas, 0 Nays)

THE SENATE HAS GRANTED THE REQUEST OF THE HOUSE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

**HB 3**

Senate Conferees: Averitt - Chair/Eltife/Hegar/Hinojosa/Shapiro

**HB 4**

Senate Conferees: Averitt - Chair/Deuell/Nichols/Seliger/Uresti

**HB 442**

Senate Conferees: Deuell - Chair/Eltife/Hinojosa/Lucio/Seliger

**HB 610**

Senate Conferees: Hegar - Chair/Nichols/Patrick, Dan/Watson/West, Royce

**HB 1113**

Senate Conferees: Uresti - Chair/Deuell/Hegar/Hinojosa/Seliger

**HB 1168**

Senate Conferees: Shapleigh - Chair/Duncan/Nelson/Ogden/Williams

**HB 1267**

Senate Conferees: Seliger - Chair/Duncan/Ellis/Harris/Hinojosa

**HB 1801**

Senate Conferees: Hegar - Chair/Deuell/Hinojosa/Nichols/Seliger

**HB 2006**

Senate Conferees: Janek - Chair/Carona/Duncan/Eltife/Shapleigh

**HB 2644**

Senate Conferees: West, Royce - Chair/Carona/Deuell/Ellis/Janek

**HB 2833**

Senate Conferees: Seliger - Chair/Deuell/Hegar/Van de Putte/Williams

**HB 3154**

Senate Conferees: Deuell - Chair/Hinojosa/Janek/Seliger/Van de Putte

**HB 3315**

Senate Conferees: Duncan - Chair/Ogden/Whitmire/Williams/Zaffirini

**HB 3385**

Senate Conferees: Janek - Chair/Averitt/Estes/Fraser/Watson

**HB 3438**

Senate Conferees: Lucio - Chair/Averitt/Brimer/Carona/Hinojosa

**HB 3560**

Senate Conferees: Janek - Chair/Brimer/Ellis/Fraser/Williams

**HB 3613**

Senate Conferees: Deuell - Chair/Eltife/Hinojosa/Seliger/Van de Putte

**HB 3674**

Senate Conferees: Jackson, Mike - Chair/Deuell/Harris/Patrick, Dan/West, Royce

**HB 3838**

Senate Conferees: Hegar - Chair/Duncan/Estes/Hinojosa/Uresti

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE  
COMMITTEE REPORTS:

**HB 1522** (30 Yeas, 0 Nays)**HB 1594** (30 Yeas, 0 Nays)**HB 3105** (30 Yeas, 0 Nays)**HB 3928** (30 Yeas, 0 Nays)**SB 548** (30 Yeas, 0 Nays)**SB 593** (30 Yeas, 0 Nays)**SB 1123** (30 Yeas, 0 Nays)

THE SENATE HAS DISCHARGED ITS CONFEREES AND CONCURRED  
IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

**SB 1436**

(29 Yeas, 1 Nay)

Respectfully,  
Patsy Spaw  
Secretary of the Senate

**Message No. 3**

MESSAGE FROM THE SENATE  
SENATE CHAMBER  
Austin, Texas  
Saturday, May 26, 2007 - 3

The Honorable Speaker of the House  
House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**HCR 121**

Pena

Posthumously awarding the Texas Legislative Medal of Honor to Sergeant Alfredo Gonzalez for his heroic actions in Vietnam during the Tet Offensive.

THE SENATE HAS GRANTED THE REQUEST OF THE HOUSE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

**HB 12**

Senate Conferees: Estes - Chair/Brimer/Hinojosa/Jackson, Mike/Ogden

**HB 1137**

Senate Conferees: Zaffirini - Chair/Eltife/Hegar/Shapiro/Watson

**HB 3249**

Senate Conferees: Brimer - Chair/Deuell/Harris/Hegar/Whitmire

**HB 3609**

Senate Conferees: Ellis - Chair/Brimer/Harris/Whitmire/Williams

Respectfully,  
Patsy Spaw  
Secretary of the Senate

**Message No. 4**

MESSAGE FROM THE SENATE  
SENATE CHAMBER  
Austin, Texas  
Saturday, May 26, 2007 - 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 272**

Parker

Instructing the enrolling clerk of the house to make corrections in **HB 4061**.

THE SENATE HAS GRANTED THE REQUEST OF THE HOUSE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

**HB 539**

Senate Conferees: West, Royce - Chair/Lucio/Nichols/Patrick, Dan/Wentworth

**HB 828**

Senate Conferees: Shapiro - Chair/Carona/Nelson/Shapleigh/Williams

**HB 1565**

Senate Conferees: Uresti - Chair/Averitt/Hegar/Van de Putte/Wentworth

**HB 1919**

Senate Conferees: Van de Putte - Chair/Duncan/Ellis/Lucio/Williams

**HB 2237**

Senate Conferees: Shapiro - Chair/Janek/Van de Putte/West, Royce/Williams

**HB 2265**

Senate Conferees: Averitt - Chair/Carona/Lucio/Nelson/Van de Putte

**HB 2383**

Senate Conferees: Lucio - Chair/Averitt/Hegar/Shapiro/Van de Putte

**HB 3200**

Senate Conferees: Whitmire - Chair/Hegar/Hinojosa/Ogden/Seliger

**HB 3314**

Senate Conferees: Duncan - Chair/Ogden/Whitmire/Williams/Zaffirini

**HB 3319**

Senate Conferees: Duncan - Chair/Ogden/Whitmire/Williams/Zaffirini

**HB 3382**

Senate Conferees: Uresti - Chair/Janek/Shapiro/Williams/Zaffirini

**HB 3826**

Senate Conferees: Zaffirini - Chair/Averitt/Janek/Shapiro/Van de Putte

**HB 3851**

Senate Conferees: Shapiro - Chair/Carona/Nelson/West, Royce/Zaffirini

Respectfully,

Patsy Spaw

Secretary of the Senate

**Message No. 5**

MESSAGE FROM THE SENATE  
SENATE CHAMBER  
Austin, Texas  
Saturday, May 26, 2007 - 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 1** Garcia  
Memorializing Congress to support legislation for veterans' health care budget reform.

**HCR 198** Swinford SPONSOR: Van de Putte  
Requesting the Texas Residential Construction Commission to work in cooperation with the San Antonio Housing Authority to create and implement an inspection and mediation plan relating to certain authority-built homes.

THE SENATE HAS CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

**SB 1217** (30 Yeas, 0 Nays)

**SB 1985** (30 Yeas, 0 Nays)

THE SENATE HAS GRANTED THE REQUEST OF THE HOUSE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

**HB 2667**  
Senate Conferees: Deuell - Chair/Hinojosa/Lucio/Nelson/Van de Putte

**HB 3581**  
Senate Conferees: Wentworth - Chair/Carona/Nichols/Patrick, Dan/West, Royce

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**HB 119** (30 Yeas, 0 Nays)

**HB 155** (30 Yeas, 0 Nays)

**HB 899** (30 Yeas, 0 Nays)

**HB 1251** (30 Yeas, 0 Nays)

**HB 1270** (30 Yeas, 0 Nays)

**HB 1623** (30 Yeas, 0 Nays)

**HB 1638** (30 Yeas, 0 Nays)

**HB 2034** (29 Yeas, 1 Nay)

**HB 2207** (30 Yeas, 0 Nays)  
**HB 2542** (30 Yeas, 0 Nays)  
**HB 2819** (30 Yeas, 0 Nays)  
**HB 2823** (30 Yeas, 0 Nays)  
**HB 3066** (30 Yeas, 0 Nays)  
**HB 3613** (30 Yeas, 0 Nays)  
**HB 3693** (30 Yeas, 0 Nays)  
**HB 4139** (30 Yeas, 0 Nays)  
**SB 344** (30 Yeas, 0 Nays)  
**SB 960** (30 Yeas, 0 Nays)  
**SB 1031** (30 Yeas, 0 Nays)  
**SB 1154** (30 Yeas, 0 Nays)  
**SB 1266** (30 Yeas, 0 Nays)  
**SB 1499** (30 Yeas, 0 Nays)  
**SB 1562** (30 Yeas, 0 Nays)  
**SB 1879** (30 Yeas, 0 Nays)

THE SENATE HAS DISCHARGED ITS CONFEREES AND CONCURRED  
IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

**SB 964** (30 Yeas, 0 Nays)

Respectfully,  
Patsy Spaw  
Secretary of the Senate

**Message No. 6**

MESSAGE FROM THE SENATE  
SENATE CHAMBER

Austin, Texas  
Saturday, May 26, 2007 - 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 86** Ellis  
Instructing the enrolling clerk of the senate to make corrections in **SB 222**.

Respectfully,

Patsy Spaw  
Secretary of the Senate

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APPENDIX

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ENROLLED

May 25 - HB 2, HB 316, HB 317, HB 438, HB 448, HB 492, HB 544, HB 555, HB 638, HB 681, HB 724, HB 957, HB 967, HB 971, HB 1009, HB 1086, HB 1092, HB 1207, HB 1265, HB 1287, HB 1290, HB 1303, HB 1316, HB 1330, HB 1400, HB 1459, HB 1470, HB 1519, HB 1524, HB 1609, HB 1656, HB 1667, HB 1669, HB 1671, HB 1775, HB 1889, HB 1899, HB 1944, HB 1955, HB 2074, HB 2118, HB 2138, HB 2173, HB 2190, HB 2222, HB 2328, HB 2365, HB 2389, HB 2417, HB 2427, HB 2438, HB 2467, HB 2501, HB 2523, HB 2524, HB 2543, HB 2548, HB 2703, HB 2713, HB 2715, HB 2723, HB 2724, HB 2751, HB 2752, HB 2782, HB 2820, HB 2827, HB 2895, HB 2896, HB 2897, HB 2917, HB 2918, HB 2926, HB 2936, HB 2949, HB 3060, HB 3106, HB 3220, HB 3672, HB 3776, HB 3876, HB 3879, HB 3984, HB 3990, HB 4015, HB 4031, HB 4037, HB 4038, HB 4039, HB 4040, HB 4041, HB 4042, HB 4043, HB 4046, HB 4047, HB 4056, HB 4057, HB 4062, HB 4065, HB 4067, HB 4070, HB 4072, HB 4074, HB 4079, HB 4080, HB 4083, HB 4084, HB 4093, HB 4094, HB 4096, HB 4097, HB 4098, HB 4099, HB 4101, HB 4104, HB 4109, HB 4111, HB 4112, HB 4114, HB 4123, HCR 12, HCR 16, HCR 25, HCR 35, HCR 102, HCR 111, HCR 151, HCR 164, HCR 187, HCR 207, HCR 233, HCR 266, HCR 267, HJR 6, HJR 72, HJR 90

SENT TO THE GOVERNOR

May 25 - HB 14, HB 41, HB 52, HB 56, HB 120, HB 149, HB 198, HB 264, HB 308, HB 323, HB 387, HB 401, HB 434, HB 462, HB 538, HB 587, HB 590, HB 618, HB 629, HB 643, HB 713, HB 738, HB 764, HB 842, HB 868, HB 887, HB 891, HB 922, HB 948, HB 963, HB 1005, HB 1049, HB 1052, HB 1082, HB 1179, HB 1187, HB 1188, HB 1204, HB 1318, HB 1346, HB 1373, HB 1418, HB 1561, HB 1572, HB 1585, HB 1586, HB 1634, HB 1678, HB 1679, HB 1719, HB 1734, HB 1764, HB 1788, HB 1789, HB 1839, HB 1930, HB 2010, HB 2015, HB 2042, HB 2132, HB 2171, HB 2216, HB 2235, HB 2293, HB 2313, HB 2341, HB 2348, HB 2350, HB 2359, HB 2371, HB 2398, HB 2444, HB 2462, HB 2471, HB 2489, HB 2503, HB 2504, HB 2518, HB 2580, HB 2622, HB 2664, HB 2691, HB 2718, HB 2754, HB 2765, HB 2796, HB 2834, HB 2882, HB 2910, HB 2945, HB 2983, HB 2992, HB 3092, HB 3123, HB 3132, HB 3135, HB 3143, HB 3325, HB 3410, HB 3492, HB 3514, HB 3537, HB 3955, HB 3972, HB 3995, HB 4044, HCR 67, HCR 215,

**HCR 216, HCR 217, HCR 246**

**SENT TO THE SECRETARY OF THE STATE**

**May 25 - HJR 103**

**SIGNED BY THE GOVERNOR**

**May 25 - HB 35, HB 143, HB 398, HB 402, HB 522, HB 630, HB 632, HB 679, HB 732, HB 741, HB 862, HB 864, HB 944, HB 1260, HB 1279, HB 1332, HB 1380, HB 1396, HB 1416, HB 1449, HB 1472, HB 1491, HB 1560, HB 1716, HB 1768, HB 1780, HB 1781, HB 1784, HB 1852, HB 1853, HB 1922, HB 1947, HB 1962, HB 1987, HB 2005, HB 2018, HB 2090, HB 2127, HB 2130, HB 2219, HB 2618, HB 2708, HB 2727, HB 2839, HB 3437, HCR 15, HCR 93, HCR 94**

**VETOED BY THE GOVERNOR**

**May 25 - HB 770**