

HOUSE JOURNAL

EIGHTIETH LEGISLATURE, REGULAR SESSION

PROCEEDINGS

EIGHTY-SIXTH DAY — SUNDAY, MAY 27, 2007

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

The roll of the house was called and a quorum was announced present (Record 1918).

Present — Mr. Speaker; Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; 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; 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; Taylor; Thompson; Truitt; Turner; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

Absent — Chisum; Dunnam; Harless; Talton.

The invocation was offered by Bob Alderman, pastor, First Baptist Church, Rio Grande City, as follows:

Dear Heavenly Father, today we come before your throne of grace and mercy in the precious and holy name of your son Jesus to lift this group of women and men who serve you by serving the great State of Texas.

Thank you for these men and women who so faithfully and selflessly yield themselves in service to this great land you have given us. Father, I ask that you guide their work, guard their thoughts and that your word be the lamp that lights their way to the brighter future you have already prepared for us just beyond the coming horizon. I pray for each and every member of the Texas House of Representatives. I ask for you to love and protect them; pour out upon them health, wisdom, and compassion as they fulfill their duties. Lord, may your grace

and mercy fill these chambers, may your hope fill these halls, and may your wisdom guide every decision that is made. May your will be done here as it is in heaven.

Father, in like manner we pray for the Texas Senate, the governor of our great state, and all those who serve Texas.

Father God, I pray for the families of these men and women who sacrifice their time to serve their state, their community, and their Lord. Father, redeem the time that has been given and build into them strong families and fruitful relationships.

Lord, I ask that you would gather each and every person who serves the Texas House of Representatives into your loving arms, that they would know your warmth, experience your grace, and rest in your arms. Thank you God, and we ask all of this in the name of your son Jesus Christ. Amen. May the grace of our Lord Jesus Christ, the Love of God, and the fellowship of the Holy Spirit be with you all.

(Harless now present)

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

(Speaker pro tempore in the chair)

PARLIAMENTARY INQUIRY

REPRESENTATIVE EILAND: We were supposed to start at 2 o'clock?

SPEAKER PRO TEMPORE TURNER: Yes.

EILAND: Why did we start at 2 o'clock instead of 10 o'clock, or 9 o'clock?

SPEAKER PRO TEMPORE: I know one of the reasons is we were trying to give people an opportunity to go to church this morning.

EILAND: Okay, but there's early church, and church is over at noon.

SPEAKER PRO TEMPORE: I know I did not get out until after 12. There were some who didn't get out until right around one, but it was just to give people an opportunity to go to church this morning, as far as I know.

HR 2892 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 2892**, suspending the limitations on the conferees for **HB 1**.

HR 2881 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 2881**, suspending the limitations on the conferees for **HB 2237**.

HR 2878 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 2878**, suspending the limitations on the conferees for **SB 218**.

HR 2848 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 2848**, suspending the limitations on the conferees for **HB 1623**.

HR 2880 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 2880**, suspending the limitations on the conferees for **SB 1119**.

HR 2894 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 2894**, suspending the limitations on the conferees for **HB 1386**.

HR 2588 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 2588**, suspending the limitations on the conferees for **SB 344**.

HR 2679 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 2679**, suspending the limitations on the conferees for **SB 1154**.

HR 2863 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 2863**, suspending the limitations on the conferees for **HB 2833**.

HR 2871 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 2871**, suspending the limitations on the conferees for **HB 892**.

HR 2872 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 2872**, suspending the limitations on the conferees for **SB 1871**.

HR 2876 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 2876**, suspending the limitations on the conferees for **HB 2093**.

HR 2887 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 2887**, suspending the limitations on the conferees for **SB 3**.

HR 2890 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 2890**, suspending the limitations on the conferees for **HB 3249**.

HR 2893 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 2893**, suspending the limitations on the conferees for **SB 909**.

HR 2891 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 2891**, suspending the limitations on the conferees for **HB 2237**.

(Speaker in the chair)

(Dunnam now present)

PARLIAMENTARY INQUIRY

REPRESENTATIVE GEREN: Mr. Speaker, I think I already know the answer to this, because I value the way that you are fair with all races and religions, but are you aware that in a public meeting, and a public forum, that the assistant parliamentarian used racial slurs against a member of this house?

SPEAKER CRADDICK: That's not a proper parliamentary inquiry, Mr. Geren.

GEREN: With knowledge of that, I find it very difficult to think that we could continue to have him serve as our attorney, our attorney—not just yours, but our attorney—and that if he wouldn't do the honorable thing and step down, I would request that you ask for his resignation, and limit his access to the house to those areas that are only public while the house is in session. I know that you are very sensitive to racial issues, as I hope most all of the members of the house, but I just find that an action that we, and he's grinning about it now, so I guess he still thinks it's funny, but it's a horrible thing that took place, and I hope that he would do the honorable thing and resign. Thank you, Mr. Speaker.

REPRESENTATIVE DUNNAM: Can you, and maybe someone has explained this, but can you explain to me the presence of DPS officers in the back hall and additional DPS personnel in the doorway to the house. Is there some danger that

we are not being made aware of? Who are they here to protect? Why do we have DPS here in positions and in numbers that I have not seen in my six terms?

SPEAKER: Mr. Dunnam, I received your letter regarding the list of—

DUNNAM: That letter was not from me, I think my office handed it off, but that letter was from Mr. Martinez Fischer, Mr. Herrero, Mr. Martinez, and someone else. That's not what I'm asking about. I'm talking about the presence, the physical presence of DPS personnel, two right outside of this door, one outside each one of these doors, upstairs where we've never had them before. Is there a security risk that we need to know about? Do we have threats that have been made to the chamber or any members of the chamber? Is there a reason for the heightened security around the chamber that warrants these gentlemen and ladies being present in their location?

SPEAKER: Mr. Dunnam, as I tried to tell you a moment ago, in response to the letter that you sent or we got from your office, the Speaker's office did not have interaction with the DPS on this. We do know of one member who has had threats on her life, and that may be related to it, but I don't know. You should direct your questions to the chair of House Administration, Mr. Goolsby.

DUNNAM: And just so that members—you brought up a letter. The letter had to do with instructions the DPS had received, that certain members of this body would not be shown on video, and the microphones would be turned off on those members as a matter of standard practice, and I do know my office still hand-delivered the letter, but that was at the request of Mr. Martinez Fischer, and the other members who signed the letter. I didn't sign the letter. So you don't know why we have extra DPS in the front hall and the back hall?

SPEAKER: No such list has been distributed, nor anything like it has ever been created verbally, communicated to the sergeant-at-arms or the DPS. So you need to talk to Mr. Goolsby.

DUNNAM: So, Mr. Goolsby is responsible for the additional DPS?

SPEAKER: He's the chairman of House Administration. If you have any questions about it, you can—

DUNNAM: Well, he had nothing to do with the hiring of the parliamentarians, and he's supposed to have something to do with that, too. Are you telling the body that you have no idea—

SPEAKER: You're not correct on that, Mr. Dunnam.

DUNNAM: You don't have any idea why we have additional troopers in the building?

SPEAKER: No, I'm not advised.

DUNNAM: Have you been provided with a copy of— it's my understanding that your position in regards to your office, is that you are a state official or state officer? Is that correct?

SPEAKER: That's correct.

DUNNAM: Are you aware of the Texarkana court opinion that we've delivered to the parliamentarian's office states that specifically that the speaker of the house is not a state official or state officer?

SPEAKER: We are aware of it and that's an incorrect statement.

DUNNAM: It's an incorrect statement that the case says that?

SPEAKER: That's correct. That case was quoting a Colorado court.

DUNNAM: It's a Texas, Texarkana Court of Appeals opinion, you're aware of that? And so you choose to—

SPEAKER: We are aware of that, and we've entered into the journal our answer.

DUNNAM: Mr. Speaker, let me ask one last thing. Regardless, assuming that there's 149 members in this chamber that would vote to vacate the speaker's position, are you still not going to recognize anyone for any such type motion, regardless of how many members want to vote on it?

SPEAKER: We've already answered that question several times.

DUNNAM: Well, I don't think that question's been asked.

SPEAKER: We've already answered it, Mr.—

DUNNAM: You're not going to recognize it?

SPEAKER: That motion will not be—

DUNNAM: Let me ask, then, is there any procedural mechanism that this chamber has if a majority of members want to vacate the chair, is there any procedural mechanism that you will recognize to give us the opportunity to just have a vote, and let the will of the majority be determined? Is there any procedural mechanism that you will recognize?

SPEAKER: We're going to follow the rules of the house.

DUNNAM: And I'm asking, under the rules of the house, that's why this is a parliamentary inquiry. Under the rules of the house, and the Texas Constitution, is there any procedural mechanism that you will recognize that will afford this body the opportunity to determine whether or not the chair should be vacated?

SPEAKER: There is no procedural method under the rules of the house.

DUNNAM: That you will recognize? I mean, we could file, for example, a privileged resolution. I'm just asking, is there any mechanism, procedural mechanism available that you will recognize that will allow this body to vote, one way or other, whether to vacate the chair?

SPEAKER: None exists in the rules.

DUNNAM: And so you are aware of the Texarkana case of *Diffie v. Cowan* that says that the speaker of the legislative assembly is not a state officer. You just believe that that is incorrect?

SPEAKER: You need to read our journal entry, we've answered that.

DUNNAM: Well, were you aware of this case when you made your entry in the journal?

SPEAKER: Yes, sir, all cases.

REPRESENTATIVE MORENO: To inquire, Mr. Speaker. Assuming that a particular amendment was passed yesterday, and the body feels that the vote was not proper, is there a way for a member to move that that particular vote be taken again?

SPEAKER: Mr. Moreno, it depends what the matter is. You'll have to come show that to us.

MORENO: Well, let's assume that the vote was won, lost, whatever, by one vote. And we or whoever had the information that the number was wrong.

SPEAKER: It depends on the matter.

MORENO: Let's assume that the vote was wrong, and we had the proper documentation that the vote was, in fact, wrong. At that point, could we today, ask that that vote be made over?

SPEAKER: I'll consider your request issue by issue. It depends on the matter.

MORENO: I can't hear you.

SPEAKER: I said I'll consider your request item by item.

MORENO: If that's the case, Mr. Speaker, then I move that the vote by which Speaker Tom Craddick was elected January 12th of this year be brought back to the floor for a recount.

SPEAKER: You're not recognized for that motion.

MORENO: You already did. You already did, Mr. Speaker.

SPEAKER: No, I did not, Mr. Moreno.

MORENO: You deny recognizing me for that?

SPEAKER: That's correct.

MORENO: Alright. You were here in 1971, as a member of the "Dirty 30," were you not? 1971—

SPEAKER: That's correct.

MORENO: You were here, you were a member of the "Dirty 30."

SPEAKER: That's correct.

MORENO: And you, with me, at that time voted that all police officers be removed from the floor of the house, and you, Mr. Speaker, at that time was one of the backers of that motion. Do you recall?

SPEAKER: I don't recall, Mr. Moreno.

MORENO: Well, let me refresh your memory. You were here, and there were police officers on the floor of this house, and you as a member of the "Dirty 30," we moved that all police officers be removed. And you, Mr. Speaker, voted with

us, that police officers be removed, and they were, in fact, removed. Did you forget that?

SPEAKER: I don't recall that, Mr. Moreno.

REMARKS ORDERED PRINTED

Representative Strama moved to print remarks between Speaker Craddick and Representative Dunnam, Speaker Craddick and Representative Geren, and Speaker Craddick and Representative Moreno.

The motion prevailed.

(Chisum and Talton now present)

REPRESENTATIVE STRAMA: I have seen in the journal a decision that is not to be called a ruling that justifies your position that a motion to vacate is not a motion that can be made on this floor. Has there been any substantiation of the speaker's position that the power of recognition is absolute?

SPEAKER: I refer you to Rule 5, Section 24, of the House Rules.

STRAMA: Has there been any precedent cited in arguing that Rule 5, Section 24, of the House Rules contravenes all the other rules of the house that compel the speaker's recognition? For example, throughout Rule 6, Establishing the Order of Business and the Calendar.

SPEAKER: Yes.

STRAMA: What is that precedent?

SPEAKER: U.S. congressional precedent.

STRAMA: I'm sorry?

SPEAKER: U.S. congressional precedent, and the explanatory notes of the House Rules, including House Rule 1, Section 9(b), as well as Rule 5, Section 24. I'd refer you to the congressional precedent on those rules, as well as the explicit rules themselves, which are specific and unambiguous.

STRAMA: If the power of recognition is absolute, can the speaker ignore a rule, for example, that compels closure of debate upon request for the previous question. Motion seconded by 25 members, and the vote of the house says we must vote. Is the speaker's power of recognition so absolute that he can recognize additional speakers in contravention of that rule?

SPEAKER: All motions require recognition by the speaker.

STRAMA: Can the speaker recognize a motion that is out of order?

SPEAKER: I'm sorry, I couldn't hear you.

STRAMA: Can the speaker recognize a motion that is out of order under the rules?

SPEAKER: Not without objection.

STRAMA: Does that mean that the objection overrules the speaker's recognition?

SPEAKER: No, there is no overruling a speaker's recognition.

STRAMA: Is the speaker required to recognize a member for a parliamentary inquiry?

SPEAKER: No, sir.

STRAMA: Is the speaker required to recognize a member on a question of privilege, under Rule 5, Section 36?

SPEAKER: No.

STRAMA: Is the speaker required to recognize a member to explain his bill, under the rules of the calendar?

SPEAKER: No, sir.

STRAMA: Can the speaker recognize a member who is not the author of the bill to lay out that member's bill, in contravention of the author's will?

SPEAKER: It just depends.

STRAMA: How is that, if the speaker's recognition power is absolute?

SPEAKER: We've already explained it to you, Mr. Strama. We direct you to Rule 5, Section 24, and Rule 1, Section 9.

STRAMA: Rule 5—

SPEAKER: And the explanatory notes. Do you have any other parliamentary inquiries?

STRAMA: Yes, sir. I wasn't sure you were finished. Rule 5, Section 6, says that when a quorum is not present, only a motion to adjourn or a motion for a call of the house is in order. Is the speaker's power of recognition so absolute that the speaker, in absence of a quorum, may recognize a member for any other purpose, in the absence of a quorum?

SPEAKER: Rule 5, Section 24, specifically states whether or not a request for recognition will be granted, and the speaker decides it on each motion that is made. The speaker will be guided in terms of order or order of priority set out in the rules.

STRAMA: Mr. Speaker, I can't understand the answer, it's a little bit disjointed. Could you please state that again?

SPEAKER: Mr. Strama, we've stated over and over again—

STRAMA: That Rule 5, Section 24, gives you plenary authority of recognition, but you said that it doesn't, for example, necessarily give you the power to recognize a member, other than the bill's author, to explain the author's bill. Is that correct?

SPEAKER: Not just that rule. Also Rule 1, Section 9.

STRAMA: I've read Rule 1, Section 9. I've also read the congressional precedent you cited on page 6 of the 80th Legislature's rules that says, "while circumscribed by the rules and practice of the house, the exercise of the power of recognition is

not subject to a point of order." Is the circumscription of the rules and practice of the house referring to the rules that govern the compulsion of this chair to recognize members when they are in order?

SPEAKER: Mr. Strama, you need to read the rules, the journal entry, and because none of the matters you are going over are proper, since they've already been addressed, you need to step aside and enter a journal entry if you have a disagreement.

STRAMA: I have one more parliamentary inquiry, Mr. Speaker, with your permission.

SPEAKER: State your inquiry, Mr. Strama.

STRAMA: Rule 7, Section 21, allows 25 members of the house to second a motion for the previous question. It then states that the question shall be put by the chair in this manner, and prescribes the behavior of the chair when that motion is correctly placed. Is the speaker compelled to recognize such a motion? Or are the powers of the speaker to recognize so absolute, that 25 members of this house, following the rules of the house, are ceded to the plenary authority of the speaker to decide against their will?

SPEAKER: Your question is answered by Rule 5, Section 24.

STRAMA: Would you please place in the record some analysis of precedent, and of congressional precedent, cited during our colloquy?

SPEAKER: It's in the record, because it's contained in our rules.

REPRESENTATIVE LEIBOWITZ: Yes, sir. In order to be clear that there's no misunderstanding regarding the motion to vacate, I have some parliamentary inquiries. The first one is, there have been no articles of impeachment filed to remove you from office from your duly elected position as representative in the Texas House of Representatives for your district. Is that correct, sir?

SPEAKER: That's correct.

LEIBOWITZ: Nor have any documents been filed to expel you from the Texas House of Representatives. Is that correct?

SPEAKER: That's correct.

LEIBOWITZ: Is it the chair's understanding that the chair has been asked to recognize a motion to vacate the chair?

SPEAKER: I believe some members have asked to be recognized for that.

LEIBOWITZ: Yes, sir. Is it the chair's understanding that the motion to vacate is not a motion to kick you out of the Texas House of Representatives?

SPEAKER: Mr. Leibowitz, if you'll read our journal entry, and the applicable provisions cited therein, it answers your inquiry, and we've answered this.

LEIBOWITZ: I want to make sure that we're all completely on the same wavelength, Mr. Speaker, and I want to be clear that what is being asked of the chair, the chair understands that that is what is being asked, and I would kindly

request an answer to my question. I've actually read the journal entry several times, sir, and dissected it, and I'm just asking kindly for an answer to my inquiry.

SPEAKER: You can make your own journal entry, Mr. Leibowitz, if you have any debate about what we've already stated in the journal.

LEIBOWITZ: Can we conclude that it is the chair's understanding that the motion to vacate is not an effort to kick Mr. Craddick out of the Texas House of Representatives?

SPEAKER: Mr. Leibowitz, we refer you to the journal entry.

LEIBOWITZ: The answer's not there, sir. Is it the chair's understanding that the motion to vacate is not a motion to expel the chair from the house of representatives?

SPEAKER: Mr. Leibowitz, we refer you to the journal entry.

LEIBOWITZ: Well, sir, I'm making the inquiry, respectfully, because the answer to my inquiry is not in the journal.

SPEAKER: I disagree, respectfully disagree with you.

LEIBOWITZ: Sir, you do understand, do you not, the difference between impeachment and expulsion on the one hand, where someone is being kicked out of office, and out of an elected body, to which they were elected by the citizens, and on the other hand, vacating a position internally, within a body, a position to which the person was elected by the other members of that body? Do you not, sir?

SPEAKER: Mr. Leibowitz, the rules and the constitution are clear to me. If they are not clear to you, you are welcome to make your own journal entry.

LEIBOWITZ: I just want to make sure we are on the same wavelength, Mr. Speaker. I have one or two more questions. Does the chair understand that the motion to vacate, for which recognition has been sought, is the vacating of a position internally, which I've just described?

SPEAKER: We've already made a journal entry in discussion of the motion to vacate, and we stand by it.

LEIBOWITZ: And are we all clear in this body, the request for recognition is to vacate a position, an internal position, a position that was elected by the members of the body itself, as opposed to a position to which a person was elected by the citizens of this state. Are we all—

SPEAKER: That's not a proper parliamentary inquiry.

LEIBOWITZ: Is there any misunderstanding, Mr. Speaker, as to what is being asked of you, sir, with respect to the motion to vacate?

SPEAKER: No.

LEIBOWITZ: Sir?

SPEAKER: I don't have a misunderstanding.

LEIBOWITZ: Very good. Thank you, sir.

REMARKS ORDERED PRINTED

Representative Burnam moved to print remarks between Speaker Craddick and Representative Strama, and Speaker Craddick and Representative Leibowitz.

The motion prevailed.

REPRESENTATIVE HARTNETT: Mr. Speaker, I have a statement from the precedents of the house of representatives and on certain occasions, this house may turn to those precedents. Is that correct?

SPEAKER: That's correct, when our rules are silent.

HARTNETT: On page 919, Section 1426, in the precedents of the house of representatives, there's a statement by the speaker of the house of representatives. In declining to recognize a motion and declining to entertain an appeal of his ruling, he stated, "there is really no power in the House itself to appeal from a recognition of the chair. The right of recognition is just as absolute in the chair as the judgement of the Supreme Court of the United States is absolute as to the interpretation of the law." Does that appear to comport with the speaker's ruling in this situation?

SPEAKER: It does, and it's consistent with our rules as well.

REPRESENTATIVE ZEDLER: Are we under a deadline to get business done today?

SPEAKER: We have a midnight deadline, Mr. Zedler.

ZEDLER: Is there a way we can get on to doing the peoples' business, as opposed to some peoples' personal agendas?

SPEAKER: That's up to the members, Mr. Zedler.

REPRESENTATIVE HARPER-BROWN: Mr. Speaker, do we have a full calendar for today?

SPEAKER: We do indeed.

HARPER-BROWN: Mr. Speaker, does that calendar include the budget for the people of the State of Texas?

SPEAKER: It does, actually, we have three full calendars.

HARPER-BROWN: And does that budget include funding our schools?

SPEAKER: It does.

HARPER-BROWN: And does it also include helping the medically poor, indigent, and the people who need our help in this state?

SPEAKER: Yes, ma'am.

HARPER-BROWN: Mr. Speaker, I, like Mr. Zedler, hope that, I believe, that the people of the State of Texas, a majority of the people of the State of Texas, would rather we get on with the business of the state, and leave our campaigning and electioneering to the end of the session. Thank you, Mr. Speaker.

REMARKS ORDERED PRINTED

Representative Berman moved to print remarks between Speaker Craddick and Representative Hartnett, Speaker Craddick and Representative Zedler, and Speaker Craddick and Representative Harper-Brown.

The motion prevailed.

HR 2905 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the speaker announced the introduction of **HR 2905**, suspending the limitations on the conferees for **SB 12**.

HR 2909 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the speaker announced the introduction of **HR 2909**, suspending the limitations on the conferees for **HB 828**.

SB 482 - MOTION TO ADOPT CONFERENCE COMMITTEE REPORT

Representative P. King submitted the conference committee report on **SB 482**.

(Speaker pro tempore in the chair)

SB 482 - POINT OF ORDER

Representative Dunnam raised a point of order against further consideration of **SB 482** under Rule 8, Section 4 of the House Rules and Article III, Section 35 of the Texas Constitution on the grounds that the conference committee report changes general law.

The chair sustained the point of order.

**ADDRESS BY REPRESENTATIVE P. KING
ON A MATTER OF PERSONAL PRIVILEGE**

The chair recognized Representative P. King who addressed the house on a matter of personal privilege, speaking as follows:

Mr. Speaker, members, I've never done a personal privilege speech before, and I apologize for taking up time. I wanted to very clearly thank the senate conferees on the electric bills, and specifically the house conferees, Speaker Turner, Chairman Hartnett, Miller, and Straus, for their really hard, hard work on trying to do something to help the electric industry. I know this bill was just defeated on a point of order, and I did want you to know, though, and did want to have the opportunity to put in the record what your conference committee had put together for the consumers of Texas.

This bill did a number of things to help accelerate retail competition in the electric market to enhance consumer protections and prevent the market power abuse that we've all seen in the last couple of years. Frankly, the conference committee report looks a whole lot, very much like the version of this bill that the house passed about six weeks ago. The bill guaranteed a rate cut for all price-to-beat customers in Texas. It was going to take place in two steps. I can tell

you for the TXU region, in which myself and Mr. Hartnett are in, it would have been a nine percent price cut for anyone, which is the majority of folks who are still on the price-to-beat. In addition, the bill would have authorized the Public Utility Commission to review rates. We were all worried about that 141st day, and it would have allowed us to review rates, and if they skyrocketed, as they have in the last couple of years after Katrina and Rita, the PUC now, for the first time, would have had the authority to step in and to mitigate those rates, and to pull those back down so that the families we represent would not be hit with sudden increases in the price of electricity for their homes.

The bill had a lot of consumer protections, contrary to some misunderstanding that was before the house yesterday. This bill eliminated the deposits for electric services for customers who had 12 consecutive months of paying on time. As you know, those deposits are large, and for a lot of families, they're hard to make. It eliminated credit scoring for someone to be able to switch to an electric provider. It provided protections for critical care, elderly, and low-income customers from disconnection during severe weather months, and even to pay back those months that the bills were too high for them, it stretched out, almost double, the amount of time to do that. It eliminated all deposits for electric service from any elderly, low-income customer. All deposits. It eliminated deceptive advertising that was currently going on by some of the old, incumbent utilities to try to maintain some monopoly control. It eliminated any cancellation fees for our month-to-month folks. You know, a lot of people wanted to switch to different providers, but they would get hit with a \$100 or \$200 or \$300 cancellation fee, and it stopped that dead in its tracks.

The TXU, KKR fellows, which I'm quite confident are really clapping right now, because they're the ones who skated without any limitations now, this bill would have required complete, functional separation of TXU into four companies. A holding company, a transmission and distribution utility, a retail electric provider, and a generation company. And there were gigantic firewalls built between those companies. They had to have separate and distinct names and logos. They would have exclusive boards of directors, with no overlap. Not even the holding company, I can't think of any other statutory requirement in law that says that a holding company can't have a board of directors from the holding company on an affiliate's board, but we put that in there. They couldn't even have officers between the corporations, between the companies, that overlapped. They had to have separate headquarters, operate out of separate facilities. They couldn't even share the same offices. They had to maintain arms-length relationships on any transactions that took place between any of the affiliates. And we expanded this Public Utility Code, Code of Conduct, in all business transactions with their respective companies. We made them prepare separate financial statements, and we had them give the PUC, we had TXU and KKR give the PUC full, complete access to all their books and records, to make sure that they were not continuing to manipulate the price of electricity for our constituents. We even made them keep separate equipment. They couldn't even share market-related data, and on top of that, we created an affidavit, kind of like Sarbanes-Oxley, that every CEO

had to sign, and any other employee in the PUC required, to show that they complied with these requirements, and it was a felony if they falsified that affidavit.

We created a new code of conduct—to make sure—we were all worried in this sale, and it's probably going to happen now. We were all worried that the new owners might shift all the debt from this purchase, at \$34 billion in debt, shifted over to the lines and poles, the regulated part. We had something in this that completely prohibited that. The bill even created a criminal penalty, a criminal penalty, for officers and directors of an electric utility who intentionally cheated, who intentionally manipulated the market. And we added fines. The fines are \$25,000 per event. If you cheat, we raised it to \$1 million a day. \$1 million a day, because today you can manipulate the market and make a bunch more money in one day, millions, than you could theoretically be fined. So we raised it to \$1 million a day, and put in place treble damages, treble damages, because we had to make the penalty high enough that people were afraid they could go to jail, and they could go bankrupt, or take a big penalty if they tried to cheat, if they tried to, frankly, steal from our constituents.

We did some things to really stimulate the retail market, because the conferees knew that if they lowered the electric price, what would keep it from going back up? So they required companies like TXU and Reliant and Direct to go outside of their area, and pick up, in some cases, 120,000 customers a year for each of the next three years. The idea was if they were to go into—for example, if Reliant went into TXU's territory to pick up 120,000 customers, the only way they could do that was to offer lower prices. This was going to put a downward, strong downward pressure on pricing, and they got fined \$100 a customer the first year, \$200 the second, and \$300 the third, for each customer they failed to meet the goal for. That in itself ran into millions and millions of dollars, and those millions and millions of dollars they were going to supplement the system benefit fund. And some estimates, it could have been upwards of \$100 million, as supplement for our low-income families. The bill also allowed the money—for every year since 2003 that money has been swept out of the budget for the system benefit fund. We've been making people pay the tax, but it doesn't go to help low-income folks. This bill directed those funds back to the low income. It directed them back, to make sure that the people who needed those funds were getting them, instead of just going back into the general revenue.

We also, for those of you in the Houston area, where Centerpoint is at. You know, Centerpoint, when we forcibly split, when old Houston Industries forcibly split up, it ended up costing the rate payers \$2.3 billion in stranded costs. We didn't want that to happen, so that's why we designed the TXU breakup differently. That's why we did it differently. But anyway, all you folks in Houston, all your constituents are still paying that \$2.3 billion, and will pay it for the next 15 years. So we had a new financing method in this, and that new financing method would have saved \$132 million just in financing alone, and at no cost to anyone, and that is lost as well.

My point in reading all of this is to say just to thank the members of the conference committee for working very, very hard and for putting together a very, very good bill. It's a shame and it's sad that it's lost, and our consumers will pay the price for that for the next couple of years. I can assure you that the people who will not be paying the price, but who will be benefiting from it, will be the electric companies, who aren't going to be required to lower their rates, aren't going to be required to offer low-income preferences to folks who need it, and to the purchasers of TXU, who now will have unfettered opportunity to do whatever they wish to do in that transfer. And I thank you for the privilege of mentioning this. Mr. Speaker, I would move that these remarks be entered into the journal, if no one has any objection. And again, I want to thank the conferees, and the members of the house.

REMARKS ORDERED PRINTED

Representative P. King moved to print his personal privilege address.

The motion prevailed.

PROCLAMATION BY THE GOVERNOR OF THE STATE OF TEXAS

The chair laid before the house and had read the following proclamation by the governor:

TO ALL WHOM THESE PRESENTS SHALL COME:

TO THE MEMBERS OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE EIGHTIETH TEXAS LEGISLATURE, REGULAR SESSION:

Pursuant to Article IV, Section 15 of the Texas Constitution, I, Rick Perry, Governor of Texas, do hereby take the following action on **HCR 30** by Bonnen of the 80th Texas Legislature, Regular Session:

The official designation of items and objects as much-loved objects of Texas should represent the entire state and not just one region or locality. This resolution designates an amphibian as the official State Amphibian of Texas that is found in only one Texas county. Such a small area does not adequately represent the State of Texas as a whole. Therefore, I am not signing **HCR 30** by Bonnen.

Since you remain gathered in regular session and continue to conduct formal business, I am filing this message directly with you along with the official unsigned, enrolled copy of the resolution.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 26th Day of May, 2007.

Rick Perry
Governor of Texas

(SEAL)
Roger Williams
Secretary of State

SB 482 - PARLIAMENTARY INQUIRY

REPRESENTATIVE COLEMAN: Mr. Speaker, on **SB 482**, is it possible for the senate to reconsider the vote by which **SB 482** has been adopted, and suspend the conference committee and concur with, and actually just vote out house amendments?

SPEAKER PRO TEMPORE: It is possible within the discretion of the senate.

COLEMAN: Also, is it possible for the conference committee on **SB 482** to go back in and through procedures that are necessary to write a new conference report, bring it to this floor with the will of the house in it, and suspend the rules today and tomorrow, and pass that bill?

SPEAKER PRO TEMPORE: The point of order was raised on the conference committee report on the house. The senate can always discharge the conferees and concur.

COLEMAN: Is it possible to bring up the bill, reconsider the bill, bring it back, and have the conference committee report come up with a changed conference committee report, with both sides, Mr. Speaker?

SPEAKER PRO TEMPORE: The first part of your question, is dependent upon the discretion of the senate. Anything is possible if the rules are suspended.

**ADDRESS BY REPRESENTATIVE STRAMA
ON A MATTER OF PERSONAL PRIVILEGE**

The chair recognized Representative Strama who addressed the house on a matter of personal privilege, speaking as follows:

Thank you, Mr. Speaker, and I am aware that we have an important calendar to attend today so I will keep this brief. I want to tell you—I haven't slept in two nights, and it is not over the question of whether we should vacate the chair. I haven't slept in two nights because we have established a new rule that says that the power of recognition is absolute—not just with regard to the recognition of speakers for the purpose of debate, but to the recognition of motions for the purposes of actions by this house and that, I believe, turns this entire rule book into something that is purely recyclable, because the only way to enforce the rules is through a motion by a member of this house, by calling a point of order. It is the only way any of these rules can be enforced, and if recognition of that motion is at the discretion of the chair, if the power of recognition is absolute, as it has been said over and over for the last two days, under Rule 5, Section 24, then all of Rule 6 governing the order of business is meaningless.

Representative Hartnett cited congressional precedence. Let me read to you from the piece of paper he cited, "For a long time the speakers have exercised the right to decline to recognize for a motion to suspend the rules, but they do not have any such rights as to motions privileged under the rules and in order." During my colloquy with the speaker, they referenced congressional precedence under Rule 1, Section 9. Rule 1, Section 9, in the explanatory notes says, "While

circumscribed by the rules and practice of the house, the exercise of the power of recognition is not subject to a point of order, and, under appeals, its says the right of appeal can not be taken away from the house."

Members, I agree that the power of recognition is absolute in Rule 5, Section 24, when it is viewed in the context of Rules 22 and 23, because that is Chapter C of Rule 5 governing speaking and debate. And that is where the speaker gains the power to create an orderly format for debate. If you read Mr. Hartnett's precedent, it refers to the historical background for that power of recognition, to govern who gets to speak in what order because you cannot anticipate in established rules governing who gets to speak when. But, all the other rules of this house—I'm not a lawyer, I'm a technical guy, I'm a technology person. So I went online last night and did a search of all the times in this rule book when it says "the chair shall". And when it says "the chair shall", the chair is compelled to do what the rule book says. But the only compulsion, the only mechanism to enforce those rules is if the chair is forced to recognize privileged motions and points of order.

I've read the speaker's journal entry about why a motion to vacate is out of order and I have read Article XV, Section 7, of the constitution and I, not being a lawyer, believe a court can adjudicate the question that the speaker argues. I don't care anymore. What I care about is that this house have rules. Because if it has no rules, then the power of the speaker is plenary, not just with regard to recognition, but with regard to everything. The calendar, the order of business, who gets to lay out a bill, what arguments are entertained on this floor, ultimately, what votes we take and what policies we make are determined by one person elected at the beginning of session and to whom we would have turned over all of our power.

This system of government is one built on checks and balances—we would not, we could not, we should not, cede our power to one person and give them plenary tyrannical authority over our ability to make decisions, and a plain reading of the rules, and a plain reading of precedents says that it cannot possibly be the case, that the power of recognition for purposes of speaking and debate in Rule 5, Chapter C extends to the power to deny members privileged motions to deny their ability to make points of order, to deny 25 members of this house the ability to second the motion for the previous question. Our rules mean nothing if the power of recognition extends beyond speaking and debate.

I'm not a lawyer but I've heard the phrase, "Humpty-Dumptyism" when people talk about rulings that don't comport with the plain language of the law. So I looked up that section of *Through the Looking Glass* because like all of you, I'm sure, I've felt like we've been through the looking glass for the last couple of days. In the section where Alice confronts Humpty Dumpty, he says, "When I use a word, it means just what I choose it to mean. Nothing more nor less." Alice says, "The question is whether you can make words mean so many different things," and Humpty Dumpty says, "The question is who is master. That's all". That's not the question. In America, that's not the question. That's not the way we do things. And so, I hope the speaker will reconsider his position on that. It is a position without precedents, it is a position that undermines the fundamental principles of government in this country, and I hope all of you will join me in encouraging him to reconsider that position.

REMARKS ORDERED PRINTED

Representative Dunnam moved to print remarks by Representative P. King, Representative Coleman, and Representative Strama.

The motion prevailed.

HB 447 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Callegari submitted the following conference committee report on **HB 447**:

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 447** 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
Brimer
Eltife
Hegar
Whitmire

On the part of the senate

Callegari
Escobar
Macias
Murphy
W. Smith

On the part of the house

HB 447, A bill to be entitled An Act relating to contracts by governmental entities and related professional services and to public works performance and payment bonds, and to certain regulations of local authorities.

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

ARTICLE 1. PUBLIC WORKS PERFORMANCE AND PAYMENT BONDS

SECTION 1.01. Section 2253.021, Government Code, is amended by adding Subsection (h) to read as follows:

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

ARTICLE 2. CONTRACTS BY GOVERNMENTAL ENTITIES

SECTION 2.01. Section 11.168, Education Code, as added by Chapter 979, Acts of the 79th Legislature, Regular Session, 2005, is amended to read as follows:

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

(b) This section does not prohibit the board of trustees of a school district from entering into an agreement for the design, construction, or renovation of improvements to real property not owned or leased by the district if the improvements benefit real property owned or leased by the district. Benefits to real property owned or leased by the district include the design, construction, or renovation of highways, roads, streets, sidewalks, crosswalks, utilities, and drainage improvements that serve or benefit the real property owned or leased by the district.

SECTION 2.02. Sections 44.031(a) and (f), Education Code, are amended to read as follows:

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

- (1) competitive bidding for services other than construction services;
- (2) competitive sealed proposals for services other than construction services;
- (3) a request for proposals, for services other than construction services;
- (4) a catalogue purchase as provided by Subchapter B, Chapter 2157, Government Code;
- (5) an interlocal contract;
- (6) a method provided by Chapter 2264, Government Code;
- (7) a design/build contract;
- ~~[(7) a contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager;~~
- ~~[(8) a job order contract for the minor construction, repair, rehabilitation, or alteration of a facility;~~
- ~~[(9) the reverse auction procedure as defined by Section 2155.062(d), Government Code; or~~
- (8) [(10)] the formation of a political subdivision corporation under Section 304.001, Local Government Code.

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

SECTION 2.03. Subchapter B, Chapter 44, Education Code, is amended by adding Section 44.0351 to read as follows:

Sec. 44.0351. COMPETITIVE BIDDING. (a) Except to the extent prohibited by other law and to the extent consistent with this subchapter, a school district may use competitive bidding to select a vendor as authorized by Section 44.031(a)(1).

(b) Except as provided by this subsection, Subchapter B, Chapter 271, Local Government Code, does not apply to a competitive bidding process under this subchapter. Sections 271.026, 271.027(a), and 271.0275, Local Government Code, apply to a competitive bidding process under this subchapter.

(c) A school district shall award a competitively bid contract at the bid amount to the bidder offering the best value for the district. In determining the best value for the district, the district is not restricted to considering price alone, but may consider any other factors stated in the selection criteria. The selection criteria may include the factors listed in Section 44.031(b).

SECTION 2.04. Subchapter B, Chapter 44, Education Code, is amended by adding Section 44.0361 to read as follows:

Sec. 44.0361. COMPETITIVE SEALED PROPOSALS. (a) In selecting a vendor through competitive sealed proposals as authorized by Section 44.031(a)(2), a school district shall follow the procedures prescribed by this section.

(b) The district shall prepare a request for competitive sealed proposals that includes information that vendors may require to respond to the request. The district shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror.

(c) The district shall receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all prices stated in each proposal. Not later than the 45th day after the date on which the proposals are opened, the district shall evaluate and rank each proposal submitted in relation to the published selection criteria.

(d) The district shall select the offeror that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The district shall first attempt to negotiate with the selected offeror a contract. The district may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the district is unable to negotiate a contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

(e) In determining the best value for the district, the district is not restricted to considering price alone, but may consider any other factors stated in the selection criteria.

SECTION 2.05. Subchapter B, Chapter 44, Education Code, is amended by adding Section 44.0411 to read as follows:

Sec. 44.0411. CHANGE ORDERS. (a) If a change in plans or specifications is necessary after the performance of a contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the district may approve change orders making the changes.

(b) The total contract price may not be increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants.

(c) The district may grant general authority to an administrative official to approve the change orders.

(d) A contract with an original contract price of \$1 million or more may not be increased under this section by more than 25 percent. If a change order for a contract with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, subsequent change orders may not increase the revised contract amount by more than 25 percent.

SECTION 2.06. Subchapter A, Chapter 46, Education Code, is amended by adding Section 46.0111 to read as follows:

Sec. 46.0111. ACTIONS BROUGHT FOR DEFECTIVE DESIGN, CONSTRUCTION, RENOVATION, OR IMPROVEMENT OF INSTRUCTIONAL FACILITY. (a) In this section:

(1) "Net proceeds" means the difference between the amount recovered by or on behalf of a school district in an action, by settlement or otherwise, and the legal fees and litigation costs incurred by the district in prosecuting the action.

(2) "State's share" means an amount equal to the district's net proceeds from the recovery multiplied by a percentage determined by dividing the amount of state assistance under this subchapter used to pay the principal of and interest on bonds issued in connection with the instructional facility that is the subject of the action by the total amount of principal and interest paid on the bonds as of the date of the judgment or settlement.

(b) A school district that brings an action for recovery of damages for the defective design, construction, renovation, or improvement of an instructional facility financed by bonds for which the district receives state assistance under this subchapter shall provide the commissioner with written notice of the action.

(c) The commissioner may join in the action on behalf of the state to protect the state's share in the action.

(d) A school district shall use the net proceeds from an action brought by the district for the defective design, construction, renovation, or improvement of an instructional facility financed by bonds for which the district receives state assistance under this subchapter to repair the defective design, construction, renovation, or improvement of the instructional facility on which the action is brought or to replace the facility. Section 46.008 applies to the repair.

(e) The state's share is state property. The school district shall send to the comptroller any portion of the state's share not used by the school district to repair the defective design, construction, renovation, or improvement of the instructional facility on which the action is brought or to replace the facility. Section 42.258 applies to the state's share under this subsection.

SECTION 2.07. Section 791.011, Government Code, is amended by amending Subsection (e) and adding Subsections (h) and (i) to read as follows:

(e) An interlocal contractual payment must be in an amount that fairly compensates the performing party for the services or functions performed under the contract. This subsection does not prohibit a local government from being reimbursed for its expenses or from sharing in the profits or revenue of the performing party for insurance products if the reimbursement or sharing assists in the management of a local government.

(h) An interlocal contract may not be used to purchase engineering or architectural services unless the services are in connection with the design or construction of a specific facility to be jointly owned, used, or financed by the parties to the contract.

(i) An interlocal contract may not be used to purchase construction services unless the services are in connection with the design or construction of a specific facility to be jointly owned, used, or financed by the parties to the contract or:

(1) the services are in connection with a job order contract;

(2) the governing body of the governmental entity for whom the work will ultimately be performed approves the purchase in open session;

(3) public notice is provided in a manner consistent with a direct contract for job order contracting services; and

(4) work orders under the contract comply with Section 2264.353.

SECTION 2.08. Section 2166.2525, Government Code, is amended to read as follows:

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

SECTION 2.09. Section 2166.259, Government Code, is amended by amending Subsections (a), (b), (d), and (e) and adding Subsections (b-1), (b-2), and (b-3) to read as follows:

(a) This section applies only in relation to ~~a contract for~~ a public works project that will involve a contract or aggregated multiple contracts with ~~has~~ an estimated cost of more than \$1 ~~[\$20]~~ million.

(b) The commission shall maintain a small contractor participation assistance program to ensure full opportunity for participation in public works projects by small contractors. The program must include a:

(1) system for the centralized purchase of necessary insurance coverage for the public works project that is required under Subsection (c);

- (2) public outreach plan to:
- (A) provide public information about the program; and
 - (B) encourage small contractors to participate in the program;
- (3) technical assistance plan to aid small contractors in developing the skills necessary to participate in the program in accordance with Subsection (d); ~~and~~
- (4) financing assistance plan to provide administrative and other assistance to small contractors in obtaining necessary financing arrangements to make the participation of those contractors possible; and
- (5) method developed with guidance from the Texas Department of Insurance to assist small contractors in:
- (A) preparing bond application packages for public works projects in a format acceptable to bond underwriters; and
 - (B) obtaining bonds required to participate in public works projects.
- (b-1) The commission shall designate a commission employee to serve as small contractor participation assistance coordinator. In addition to any other responsibilities, the coordinator shall:
- (1) administer the small contractor participation assistance program established under this section;
 - (2) with the assistance of the Texas Department of Insurance, provide to small contractors technical assistance and training related to preparing bond application packages and obtaining bonds; and
 - (3) with the assistance of the facilities construction and space management division of the commission, provide to small contractors technical assistance related to participation in the program.
- (b-2) The small contractor participation assistance coordinator shall submit an annual report describing the activities and progress of the program to the governor, the lieutenant governor, and each member of the legislature.
- (b-3) Funding appropriated to the commission for the small contractor participation assistance program may only be used for that program.
- (d) A technical assistance plan adopted by the commission must include information on and assistance in:
- (1) bid estimation, the bidding process, scheduling, and the understanding of bid documents;
 - (2) the reading of construction drawings and other analogous documents;
 - (3) business accounting, bonds, and bond requirements;
 - (4) negotiation with general contractors; ~~and~~
 - (5) other technical and administrative matters considered appropriate and necessary given the complexity and scope of the public works project; and
 - (6) small contractor safety training to ensure compliance with federal job site safety standards.
- (e) The commission shall ~~may~~ negotiate contracts with persons or firms having expertise and any required license in the areas that must be included in the commission's technical assistance plan to provide the information and assistance.

SECTION 2.10. Section 2254.003(b), Government Code, is amended to read as follows:

(b) The professional fees under the contract[±

~~[(1) must be consistent with and not higher than the recommended practices and fees published by the applicable professional associations; and~~

~~[(2)] may not exceed any maximum provided by law.~~

SECTION 2.11. Subchapter A, Chapter 2254, Government Code, is amended by adding Section 2254.007 to read as follows:

Sec. 2254.007. DECLARATORY OR INJUNCTIVE RELIEF. (a) This subchapter may be enforced through an action for declaratory or injunctive relief filed not later than the 10th day after the date on which the contract is awarded.

(b) This section does not apply to enforcement of a contract entered into by a state agency. In this subsection, "state agency" has the meaning assigned by Section 2151.002. The term includes the Texas Building and Procurement Commission.

SECTION 2.12. Subtitle F, Title 10, Government Code, is amended by adding Chapter 2264 to read as follows:

CHAPTER 2264. CONTRACTING AND DELIVERY PROCEDURES FOR
CONSTRUCTION PROJECTS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2264.001. DEFINITIONS. In this chapter:

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

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

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

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

(5) "General contractor" means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for constructing, rehabilitating, altering, or repairing all or part of a facility at the contracted price.

(6) "Public work contract" means a contract for constructing, altering, or repairing a public building or carrying out or completing any public work.

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

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

(2) a local government, including:

(A) a county;

(B) a municipality;

(C) a school district;

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

(E) any other political subdivision of this state;

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

(4) any entity owned by a municipality; and

(5) any other entity that owns or operates a facility for the benefit of a municipality or county.

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

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

(c) This chapter does not prevail over a conflicting provision that requires the use of competitive bidding in:

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

(2) a rule of a county, a defense base development authority, or a conservation and reclamation district, including a river authority or any other type of water district.

(d) The governing body of a governmental entity to which Subsection (c) applies may elect to have this chapter overrule the conflicting provision in the charter or rule.

(e) This chapter does not prevail over a conflicting provision in an ordinance or resolution passed by the governing body of a municipally owned electric utility in a procedure described by Section 252.022(c), Local Government Code, that:

(1) requires the use of competitive bidding or competitive sealed proposals; or

(2) prescribes a design-build procurement procedure that conflicts with this chapter.

Sec. 2264.004. EXEMPTION: TEXAS DEPARTMENT OF TRANSPORTATION; HIGHWAY PROJECTS. This chapter does not apply to:

(1) a contract entered into by the Texas Department of Transportation;

or

(2) a project that receives money from a state or federal highway fund.

Sec. 2264.005. APPLICABILITY: INSTITUTIONS OF HIGHER EDUCATION. (a) In this section, "institution of higher education," "public junior college," and "university system" have the meanings assigned by Section 61.003, Education Code.

(b) This chapter applies to a public junior college but does not apply to:

(1) any other institution of higher education; or

(2) a university system.

Sec. 2264.006. EXEMPTION: REGIONAL TOLLWAY AUTHORITIES. This chapter does not apply to a regional tollway authority under Chapter 366, Transportation Code.

[Sections 2264.007-2264.050 reserved for expansion]

SUBCHAPTER B. GENERAL POWERS AND DUTIES

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

Sec. 2264.052. NOTICE REQUIREMENTS. (a) A governmental entity shall advertise or publish notice of requests for bids, proposals, or qualifications in a manner prescribed by law.

(b) For a contract entered into by a governmental entity under a method provided by this chapter, the governmental entity shall publish notice of the time and place the bid or proposal or request for qualifications will be received and opened in a manner prescribed by law.

Sec. 2264.053. DELEGATION OF AUTHORITY. (a) The governing body of a governmental entity may delegate its authority under this chapter regarding an action authorized or required by this chapter to a designated representative, committee, or other person.

(b) The governmental entity shall provide notice of the delegation, the limits of the delegation, and the name or title of each person designated under Subsection (a) by rule or in the request for bids, proposals, or qualifications or in an addendum to the request.

Sec. 2264.054. RIGHT TO WORK. (a) This section applies to a governmental entity when the governmental entity is engaged in:

(1) procuring goods or services under this chapter;

(2) awarding a contract under this chapter; or

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

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

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

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

Sec. 2264.055. CRITERIA TO CONSIDER. (a) In determining the award of a contract under this chapter, the governmental entity may consider:

(1) the price;

(2) the offeror's experience and reputation;

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

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

(5) the offeror's safety record;

(6) the offeror's proposed personnel;

(7) whether the offeror's financial capability is appropriate to the size and scope of the project; and

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

(b) In determining the award of a contract under this chapter, the governmental entity shall:

(1) consider and apply any existing laws, including any criteria, related to historically underutilized businesses; and

(2) consider and apply any existing laws, rules, or applicable municipal charters, including laws applicable to local governments, related to the use of women, minority, small, or disadvantaged businesses.

Sec. 2264.056. USING METHOD OTHER THAN COMPETITIVE BIDDING FOR CONSTRUCTION SERVICES; EVALUATION OF PROPOSALS; CRITERIA. (a) The governing body of a governmental entity that considers a construction contract using a method authorized by this chapter other than competitive bidding must, before advertising, determine which method provides the best value for the governmental entity.

(b) The governmental entity shall base its selection among offerors on applicable criteria listed for the particular method used. The governmental entity shall publish in the request for proposals or qualifications the criteria that will be used to evaluate the offerors, and the applicable weighted value for each criterion.

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

Sec. 2264.057. ARCHITECT OR ENGINEER SERVICES. (a) An architect or engineer required to be selected or designated under this chapter has full responsibility for complying with Chapter 1051 or 1001, Occupations Code, as applicable.

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

Sec. 2264.058. USE OF OTHER PROFESSIONAL SERVICES. (a) Independently of the contractor, construction manager-at-risk, or design-build firm, the governmental entity shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the governmental entity.

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

Sec. 2264.059. SEALED BIDS, PROPOSALS, OR QUALIFICATIONS REQUIRED. A person who submits a bid, proposal, or qualification to a governmental entity shall seal it before delivery.

[Sections 2264.060-2264.100 reserved for expansion]

SUBCHAPTER C. COMPETITIVE BIDDING METHOD

Sec. 2264.101. CONTRACTS FOR FACILITIES: COMPETITIVE BIDDING. (a) In this chapter, "competitive bidding" is a procurement method by which a governmental entity contracts with a contractor for the construction, alteration, rehabilitation, or repair of a facility by awarding the contract to the lowest responsible bidder.

(b) Except as otherwise provided by this chapter or other law, a governmental entity may contract for the construction, alteration, rehabilitation, or repair of a facility only after the entity advertises for bids for the contract in a manner prescribed by law, receives competitive bids, and awards the contract to the lowest responsible bidder.

Sec. 2264.102. USE OF ARCHITECT OR ENGINEER. The governmental entity shall select or designate an architect or engineer in accordance with Chapter 1051 or 1001, Occupations Code, as applicable, to prepare the construction documents required for a project to be awarded by competitive bidding.

Sec. 2264.103. PREPARATION OF REQUEST. The governmental entity shall prepare a request for competitive bids that includes construction documents, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to submit a bid.

Sec. 2264.104. EVALUATION OF OFFERORS. The governmental entity shall receive, publicly open, and read aloud the names of the offerors and their bids.

Sec. 2264.105. SELECTION OF OFFEROR. Not later than the seventh day after the date the contract is awarded, the governmental entity shall document the basis of its selection and shall make the evaluations public.

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

[Sections 2264.107-2264.150 reserved for expansion]

SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

Sec. 2264.151. CONTRACTS FOR FACILITIES: COMPETITIVE SEALED PROPOSALS. (a) In this chapter, "competitive sealed proposals" is a procurement method by which a governmental entity requests proposals, ranks the offerors, negotiates as prescribed, and then contracts with a general contractor for the construction, rehabilitation, alteration, or repair of a facility.

(b) In selecting a contractor through competitive sealed proposals, a governmental entity shall follow the procedures provided by this subchapter.

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

Sec. 2264.153. PREPARATION OF REQUEST. The governmental entity shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria and the weighted value for each criterion, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to respond to the request.

Sec. 2264.154. EVALUATION OF OFFERORS. (a) The governmental entity shall receive, publicly open, and read aloud the names of the offerors and any monetary proposals made by the offerors.

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

Sec. 2264.155. SELECTION OF OFFEROR. (a) The governmental entity shall select the offeror that submits the proposal that offers the best value for the governmental entity based on:

(1) the selection criteria in the request for proposal and the weighted value for those criteria in the request for proposal; and

(2) its ranking evaluation.

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

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

[Sections 2264.156-2264.200 reserved for expansion]

SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

Sec. 2264.201. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AGENT. (a) In this chapter, the "construction manager-agent method" is a delivery method by which a governmental entity contracts with a construction manager-agent, instead of a general contractor, to provide administrative services and to manage multiple contracts with various construction prime contractors.

(b) A construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that serves as the agent for the governmental entity by providing construction administration and management services described by Subsection (a) for the construction, rehabilitation, alteration, or repair of a facility.

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

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

- (1) administrative personnel;
- (2) equipment necessary to perform duties under this subchapter;
- (3) on-site management; and
- (4) other services specified in the contract.

Sec. 2264.203. LIMITS ON CONSTRUCTION MANAGER-AGENT. A construction manager-agent may not:

- (1) self-perform any aspect of the construction, rehabilitation, alteration, or repair of the facility;
- (2) be a party to a construction subcontract for the construction, rehabilitation, alteration, or repair of the facility; or
- (3) provide project bonding for the construction, rehabilitation, alteration, or repair of the facility.

Sec. 2264.204. FIDUCIARY CAPACITY OF CONSTRUCTION MANAGER-AGENT. A construction manager-agent represents the governmental entity in a fiduciary capacity.

Sec. 2264.205. USE OF ARCHITECT OR ENGINEER. (a) On or before the selection of a construction manager-agent, the governmental entity shall select or designate an architect or engineer to prepare the construction documents for the project.

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

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

Sec. 2264.206. SELECTION OF CONTRACTORS. A governmental entity using the construction manager-agent method shall procure, in accordance with applicable law and in any manner authorized by this chapter, a general contractor or trade contractors who will serve as the prime contractor for their specific portion of the work.

Sec. 2264.207. SELECTION OF CONSTRUCTION MANAGER-AGENT. A governmental entity shall select a construction manager-agent on the basis of demonstrated competence and qualifications in the same manner that an architect or engineer is selected under Section 2254.004.

Sec. 2264.208. INSURANCE. A construction manager-agent selected under this subchapter shall maintain professional liability or errors and omissions insurance in the amount of at least \$1 million for each occurrence.

[Sections 2264.209-2264.250 reserved for expansion]

SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

Sec. 2264.251. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AT-RISK. (a) In this chapter, the "construction manager-at-risk method" is a delivery method by which a governmental entity contracts with an architect or engineer for design and construction phase services and contracts separately with a construction manager-at-risk to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, alteration, or repair of a facility.

(b) A construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the governmental entity regarding construction during and after the design of the facility. The contracted price may be a guaranteed maximum price.

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

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

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

Sec. 2264.253. SELECTION PROCESS. (a) The governmental entity shall select the construction manager-at-risk in a one-step or two-step process.

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

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

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

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

(c) The governmental entity shall state the selection criteria in the request for proposals or qualifications.

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

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

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

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

Sec. 2264.254. SELECTION OF OFFEROR. (a) The governmental entity shall select the offeror that submits the proposal that offers the best value for the governmental entity based on the published selection criteria and on its ranking evaluation.

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

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

(d) Not later than the seventh day after the date the contract is awarded, the governmental entity shall make the rankings determined under Section 2264.253(g) public.

Sec. 2264.255. PERFORMANCE OF WORK. (a) A construction manager-at-risk shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions.

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

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

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

Sec. 2264.256. REVIEW OF BIDS OR PROPOSALS. (a) The construction manager-at-risk shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, architect, engineer, or governmental entity. All bids or proposals shall be made available to the governmental entity on request and to the public after the later of the award of the contract or the seventh day after the date of final selection of bids or proposals.

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

Sec. 2264.257. DEFAULT; PERFORMANCE OF WORK. If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this subchapter, the construction manager-at-risk may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

Sec. 2264.258. PERFORMANCE OR PAYMENT BOND. (a) If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the construction budget, as specified in the request for proposals or qualifications.

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

[Sections 2264.259-2264.300 reserved for expansion]

SUBCHAPTER G. DESIGN-BUILD METHOD

Sec. 2264.301. CONTRACTS FOR FACILITIES: DESIGN-BUILD. In this chapter, "design-build" is a project delivery method by which a governmental entity contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility.

Sec. 2264.302. APPLICABILITY OF SUBCHAPTER TO BUILDINGS; EXCEPTIONS. This subchapter applies only to a facility that is a building or an associated structure, including an electric utility structure. This subchapter does not apply to:

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

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

Sec. 2264.303. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A governmental entity may use the design-build method for the construction, rehabilitation, alteration, or repair of a building or associated structure only as provided by this subchapter. In using that method, the governmental entity shall enter into a single contract with a design-build firm for the design and construction of the building or associated structure.

Sec. 2264.304. DESIGN-BUILD FIRMS. A design-build firm under this subchapter must be a sole proprietorship, partnership, corporation, or other legal entity or team that includes an architect or engineer and a construction contractor.

Sec. 2264.305. USE OF ARCHITECT OR ENGINEER AS INDEPENDENT REPRESENTATIVE. The governmental entity shall select or designate an architect or engineer independent of the design-build firm to act as the governmental entity's representative for the duration of the project.

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

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

(c) The design criteria package must include a set of documents that provides sufficient information, including criteria for selection, to permit a design-build firm to prepare a response to the governmental entity's request for qualifications and to provide any additional information requested. The design criteria package must specify criteria the governmental entity considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, and any other requirement.

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

Sec. 2264.307. EVALUATION OF DESIGN-BUILD FIRMS. (a) For each design-build firm that responded to the request for qualifications, the governmental entity shall evaluate the firm's experience, technical competence, and capability to perform, the past performance of the firm and members of the

firm, and other appropriate factors submitted by the firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted.

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

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

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

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

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

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

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

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

(d) Not later than the seventh day after the date the contract is awarded, the governmental entity shall make the rankings determined under Section 2264.307(f) public.

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

Sec. 2264.310. FINAL CONSTRUCTION DOCUMENTS. The design-build firm shall supply a set of construction documents for the completed project to the governmental entity at the conclusion of construction. The documents must note any changes made during construction.

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

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

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

[Sections 2264.312-2264.350 reserved for expansion]

SUBCHAPTER H. JOB ORDER CONTRACTS METHOD

Sec. 2264.351. JOB ORDER CONTRACTING. In this chapter, "job order contracting" is a procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work required are indefinite.

Sec. 2264.352. APPLICABILITY OF SUBCHAPTER TO BUILDINGS; EXCEPTIONS. This subchapter applies only to a facility that is a building, the design and construction of which is governed by accepted building codes, or a structure or land, whether improved or unimproved, that is associated with a building. This subchapter does not apply to:

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

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

Sec. 2264.353. REQUIREMENTS FOR JOB ORDER CONTRACTS FOR FACILITIES. (a) A governmental entity may award job order contracts for the maintenance, repair, alteration, renovation, remediation, or minor construction of a facility if:

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

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

(b) The governmental entity shall establish the maximum aggregate contract price when it advertises the proposal.

(c) The governing body of a governmental entity shall approve each job order that exceeds:

(1) \$500,000 under the contract; or

(2) a lesser amount as established by the governing body.

Sec. 2264.354. CONTRACTUAL UNIT PRICES. The governmental entity may establish contractual unit prices for a job order contract by:

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

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

Sec. 2264.355. COMPETITIVE SEALED PROPOSAL METHOD. (a) A governmental entity may use the competitive sealed proposal method under Subchapter D for job order contracts.

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

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

Sec. 2264.356. AWARDING OF JOB ORDER CONTRACTS. The governmental entity may award job order contracts to one or more job order contractors in connection with each solicitation of proposals.

Sec. 2264.357. USE OF JOB ORDER CONTRACT. A job order contract may be used to accomplish work only for the governmental entity that awards the contract unless:

(1) the solicitation for the job order contract and the contract specifically provide for use by other persons; or

(2) the governmental entity enters into an interlocal agreement that provides otherwise.

Sec. 2264.358. USE OF ARCHITECT OR ENGINEER. If a job order contract or an order issued under the contract requires architectural or engineering services that constitute the practice of architecture within the meaning of Chapter 1051, Occupations Code, or the practice of engineering within the meaning of Chapter 1001, Occupations Code, the governmental entity shall select or designate an architect or engineer to prepare the construction documents for the project.

Sec. 2264.359. JOB ORDER CONTRACT TERM. The base term for a job order contract may not exceed two years. The governmental entity may renew the contract annually for not more than three additional years.

Sec. 2264.360. JOB ORDERS. (a) An order for a job or project under a job order contract must be signed by the governmental entity's representative and the contractor.

(b) The order may be:

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

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

Sec. 2264.361. PAYMENT AND PERFORMANCE BONDS. The contractor shall provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order.

[Sections 2264.362-2264.400 reserved for expansion]

SUBCHAPTER I. ENFORCEMENT

Sec. 2264.401. VOID CONTRACT. (a) A contract, including a job order, entered into in violation of this chapter and any bonds issued in connection with the contract are voidable as against public policy.

(b) An action to void a contract under this section does not excuse the obligation of the governmental entity to pay for any service performed or material delivered in good faith by a contractor, architect, engineer, design-builder, or construction manager before the date on which the contract is determined to be void.

Sec. 2264.402. DECLARATORY OR INJUNCTIVE RELIEF. (a) This chapter may be enforced through an action for declaratory or injunctive relief filed not later than the 10th day after the date on which the contract is awarded.

(b) This section does not apply to enforcement of a contract entered into by a state agency. In this subsection, "state agency" has the meaning assigned by Section 2151.002. The term includes the Texas Building and Procurement Commission.

SECTION 2.13. Section 252.048, Local Government Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) If a change order for a public works contract in a municipality with a population of 500,000 or more involves a decrease or an increase of \$100,000 or less, or a lesser amount as provided by ordinance, the governing body of the municipality may grant general authority to an administrative official of the municipality to approve the change order.

SECTION 2.14. Section 271.054, Local Government Code, is amended to read as follows:

Sec. 271.054. COMPETITIVE BIDDING REQUIREMENT. Before the governing body of an issuer may enter into a contract requiring an expenditure by or imposing an obligation or liability on the issuer, or on a subdivision of the issuer if the issuer is a county, of more than \$25,000, the governing body must:

(1) submit the proposed contract to competitive bidding; or

(2) use an alternate method of project delivery authorized by Chapter 2264, Government Code.

SECTION 2.15. Section 271.060, Local Government Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The total price of a contract may not be increased by a change order unless provision has been made for the payment of the added cost by the appropriation of current funds or bond funds for that purpose, by the authorization of the issuance of certificates, or by a combination of those procedures.

(c) A contract with an ~~The~~ original contract price of \$1 million or more may not be increased by more than 25 percent. If a change order for a contract with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, subsequent change orders may not increase the revised contract amount by more than 25 percent. ~~[The original price may not be decreased by more than 25 percent without the consent of the contractor.]~~

SECTION 2.16. Section 431.101(g), Transportation Code, is amended to read as follows:

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

SECTION 2.17. Subchapter D, Chapter 431, Transportation Code, is amended by adding Section 431.110 to read as follows:

Sec. 431.110. COMPETITIVE BIDDING EXCEPTION FOR CERTAIN IMPROVEMENTS. Any competitive bidding requirement or restriction on a local government that created a local government corporation does not apply to an expenditure by the local government corporation for:

(1) an improvement:

(A) that is constructed in a reinvestment zone; and

(B) the construction of which is managed by a private venture

participant; or

(2) an improvement constructed by the corporation for which more than 50 percent of the construction is funded by a private entity.

ARTICLE 3. ADDITIONAL EXEMPTIONS

SECTION 3.01. Section 44.901, Education Code, is amended by adding Subsection (j) to read as follows:

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

SECTION 3.02. Section 51.927, Education Code, is amended by adding Subsection (k) to read as follows:

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

SECTION 3.03. Section 2166.406, Government Code, is amended by adding Subsection (k) to read as follows:

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

SECTION 3.04. Chapter 302, Local Government Code, is amended by adding Section 302.006 to read as follows:

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

SECTION 3.05. Subchapter E, Chapter 335, Local Government Code, is amended by adding Section 335.077 to read as follows:

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

SECTION 3.06. Section 22.084, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) Chapter 2264, Government Code, does not apply to an agreement entered into under this section.

SECTION 3.07. Section 370.305, Transportation Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) Chapter 2264, Government Code, does not apply to agreements entered into pursuant to this section.

SECTION 3.08. Subchapter Q, Chapter 451, Transportation Code, is amended by adding Section 451.8025 to read as follows:

Sec. 451.8025. EXEMPTION FROM OTHER CONTRACTING LAW. Chapter 2264, Government Code, does not apply to this subchapter.

SECTION 3.09. Subchapter C, Chapter 452, Transportation Code, is amended by adding Section 452.1095 to read as follows:

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

SECTION 3.10. Section 60.401, Water Code, is amended by adding Subsection (d) to read as follows:

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

SECTION 3.11. Section 60.452, Water Code, is amended by adding Subsection (c) to read as follows:

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

ARTICLE 4. CONFORMING AMENDMENT

SECTION 4.01. Section 252.021(a), Local Government Code, is amended to read as follows:

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

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

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

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

ARTICLE 5. REPEALER

SECTION 5.01. The following are repealed:

(1) Sections 44.0315, 44.035, 44.036, 44.037, 44.038, 44.039, 44.040, and 44.041, Education Code;

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

(3) Section 252.043(d-1), Local Government Code;

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

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

ARTICLE 6. TRANSITION; EFFECTIVE DATE

SECTION 6.01. (a) The changes in law made by this Act apply only to a contract or construction project for which a governmental entity first advertises or otherwise requests bids, proposals, offers, or qualifications, or makes a similar solicitation, on or after the effective date of this Act.

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

SECTION 6.02. This Act takes effect September 1, 2007.

Representative Callegari moved to adopt the conference committee report on **HB 447**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 447** prevailed by (Record 1919): 148 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; Harless; 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).

PARLIAMENTARY INQUIRY

REPRESENTATIVE MERRITT: Mr. Bonnen was asked to lay out the bill, and yet Mr. Bonnen voted. Is there a parliamentary problem with that, Mr. Speaker?

SPEAKER PRO TEMPORE: I haven't seen if he voted—

MERRITT: I beg your pardon?

SPEAKER PRO TEMPORE: Are you asking for strict enforcement, Mr. Merritt?

MERRITT: Thank you.

HB 1522 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Harless submitted the following conference committee report on **HB 1522**:

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 1522** 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.

Williams
Ellis
Hinojosa
Nichols
Shapiro

Harless
Deshotel
Murphy
W. Smith
Vaught

On the part of the senate

On the part of the house

HB 1522, A bill to be entitled An Act relating to parking a commercial motor vehicle on certain streets.

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

SECTION 1. The heading to Section 545.307, Transportation Code, is amended to read as follows:

Sec. 545.307. **OVERNIGHT PARKING OF COMMERCIAL MOTOR VEHICLE IN OR NEAR RESIDENTIAL SUBDIVISION.**

SECTION 2. Section 545.307, Transportation Code, is amended by amending Subsections (b) and (c) and adding Subsections (b-1) and (h) to read as follows:

(b) Except as provided by Subsection (b-1), after ~~After~~ 10 p.m. and before 6 a.m., a person may not park a commercial motor vehicle or leave the vehicle parked on a street that is maintained by a county or municipality and ~~[of a residential subdivision]~~ for which signs are posted as provided by Subsection (c) if the street:

(1) is located within a residential subdivision; or

(2) is adjacent to a residential subdivision and within 1,000 feet of the property line of a residence, school, place of worship, or park.

(b-1) A person may park a commercial motor vehicle or leave the vehicle parked on a street for which signs are posted as provided by Subsection (c) if ~~unless~~ the commercial motor vehicle:

(1) is transporting persons or property to or from the residential subdivision or performing work in the subdivision; and

(2) remains parked in or adjacent to the subdivision only for the period necessary to complete the transportation or work.

(c) The residents of a residential subdivision may petition a county or municipality in which the subdivision is located for the posting of signs prohibiting the overnight parking of a commercial motor vehicle in the subdivision or on a street adjacent to the subdivision and within 1,000 feet of the property line of a residence, school, place of worship, or park. The petition must be signed by at least 25 percent of the owners or tenants of residences in the subdivision. Not more than one person for each residence may sign the petition, and each person signing must be at least 18 years of age. Promptly after the filing of a petition meeting the requirements of this subsection and subject to Subsection (d), the county or municipality receiving the petition shall post the signs. The signs must:

(1) be posted:

(A) at each entrance of the subdivision through which a commercial motor vehicle may enter the subdivision or within the subdivision if there is not defined entrance to the subdivision; or

(B) on a street adjacent to the subdivision; and

(2) state, in letters at least two inches in height, that overnight parking of a commercial motor vehicle is prohibited in the subdivision or on a street adjacent to the subdivision.

(h) This section does not apply to:

(1) a vehicle owned by a utility that an employee of the utility who is on call 24 hours a day parks at the employee's residence; or

(2) a vehicle owned by a commercial establishment that is parked on the street adjacent to where the establishment is located.

SECTION 3. This Act takes effect September 1, 2007.

Representative Harless moved to adopt the conference committee report on **HB 1522**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1522** prevailed by (Record 1920): 145 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; 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; Harless; 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; 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 — Bonnen; Mowery; Rose.

HB 119 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative F. Brown submitted the following conference committee report on **HB 119**:

Austin, Texas, May 23, 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 119** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Ogden
 Ellis
 Hegar
 Lucio

Hancock
 Isett
 D. Howard
 Hernandez
 F. Brown

On the part of the senate

On the part of the house

HB 119, A bill to be entitled An Act relating to the exemption from competitive bidding for certain purchases.

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

SECTION 1. Section 2155.132(e), Government Code, is amended to read as follows:

(e) Competitive bidding, whether formal or informal, is ~~[not]~~ required for a purchase by a state agency if the purchase:

(1) exceeds \$5,000; and

~~(2) is made under a written contract [does not exceed \$2,000, or a greater amount prescribed by commission rule].~~

SECTION 2. Section 2157.0611, Government Code, is amended to read as follows:

Sec. 2157.0611. REQUIREMENT TO EVALUATE THREE OFFERS WHEN POSSIBLE. A catalog purchase or lease that exceeds \$5,000 ~~[\$2,000]~~ or that is made under a written contract ~~[a greater amount prescribed by commission rule]~~ shall, when possible, be based on an evaluation of at least three catalog offers made to the commission or other state agency by catalog information systems vendors. If at least three catalog offers are not evaluated by the commission or other state agency before a purchase or lease is made that exceeds the threshold amount or is made under a written contract, the commission or other agency shall document the reasons for that fact before making the purchase or lease under Section 2157.063.

SECTION 3. The changes in law made by this Act to Sections 2155.132(e) and 2157.0611, Government Code, apply only to a purchase under a contract entered into on or after the effective date of this Act. A purchase under a contract entered into before the effective date of this Act is governed by the law in effect on the date the contract was entered into, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2007.

Representative F. Brown moved to adopt the conference committee report on **HB 119**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 119** prevailed by (Record 1921): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; 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; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; 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; 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 — Bonnen; Gonzalez Toureilles; Howard, C.; Jones; Smith, W.

STATEMENT OF VOTE

When Record No. 1921 was taken, I was in the house but away from my desk. I would have voted yes.

Jones

HB 155 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Pickett submitted the following conference committee report on **HB 155**:

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

Lucio
Carona
Van de Putte
Hegar

Pickett
Solomons
Truitt
Quintanilla

Ellis

On the part of the senate

Rodriguez

On the part of the house

HB 155, A bill to be entitled An Act relating to correcting errors in the distribution of benefits by a public retirement system.

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

SECTION 1. Section 802.1024, Government Code, is amended by amending Subsections (a) and (b) and adding Subsections (a-1) and (a-2) to read as follows:

(a) Except as provided by Subsection (b), if an error in the records of a public retirement system results in a person receiving more or less money than the person is entitled to receive under this subtitle, the ~~[governing body of the]~~ retirement system shall correct the error and so far as practicable adjust any future payments so that the actuarial equivalent of the benefit to which the person is entitled is paid. If no future payments are due, the ~~[governing body of the]~~ retirement system may recover the overpayment in any manner that would be permitted for the collection of any other debt.

(a-1) On discovery of an error described by Subsection (a), the public retirement system shall as soon as practicable, but not later than the 90th day after the date of discovery, give written notice of the error to the person receiving an incorrect amount of money. The notice must include:

- (1) the amount of the correction in overpayment or underpayment;
- (2) how the amount of the correction was calculated;
- (3) a brief explanation of the reason for the correction;
- (4) a statement that the notice recipient may file a written complaint with the retirement system if the recipient does not agree with the correction;
- (5) instructions for filing a written complaint; and
- (6) a payment plan option if no future payments are due.

(a-2) Except as provided by this subsection and Section 802.1025, the public retirement system shall begin to adjust future payments or, if no future payments are due, institute recovery of an overpayment of benefits under Subsection (a) not later than the 90th day after the date the notice required by Subsection (a-1) is delivered by certified mail, return receipt requested. If the system does not receive a signed receipt evidencing delivery of the notice on or before the 30th day after the date the notice is mailed, the system shall mail the notice a second time by certified mail, return receipt requested. Except as provided by Section 802.1025, not later than the 90th day after the date the second notice is mailed, the system shall begin to adjust future payments or, if no future payments are due, institute recovery of an overpayment of benefits.

(b) Except as provided by Subsection (c), a public retirement system:

(1) may correct the overpayment of benefits to a person entitled to receive payments from the system by the method described by Subsection (a) only for an overpayment made during the three years preceding the date the ~~[governing body of the]~~ system discovers or discovered the overpayment; ~~and~~

(2) may not recover from the recipient any overpayment made more than three years before the discovery of the overpayment; and

(3) may not recover an overpayment if the system did not adjust future payments or, if no future payments are due, institute recovery of the overpayment within the time prescribed by Subsection (a-2) or Section 802.1025.

SECTION 2. Subchapter B, Chapter 802, Government Code, is amended by adding Section 802.1025 to read as follows:

Sec. 802.1025. COMPLAINT PROCEDURE. (a) Not later than the 20th day after the date of receiving notice under Section 802.1024(a-1) or, if applicable, the second notice under Section 802.1024(a-2), the notice recipient may file a written complaint with the retirement system. The recipient shall include any available supporting documentation with the complaint.

(b) Not later than the 30th day after the date of receiving a complaint under Subsection (a), the retirement system shall respond in writing to the complaint by confirming the amount of the proposed correction or, if the retirement system determines the amount of the proposed correction is incorrect, by modifying the amount of the correction. If the retirement system modifies the amount of the correction, the response must include:

- (1) how the modified correction was calculated;
- (2) a brief explanation of the reason for the modification; and
- (3) a payment plan option if no future payments are due.

(c) Subject to Subsection (d), if a complaint is filed under this section, the retirement system may not adjust future payments or recover an overpayment under Section 802.1024 until:

(1) the 20th day after the date the notice recipient receives the response under Subsection (b), if the recipient does not file an administrative appeal by that date; or

(2) the date a final decision by the retirement system is issued, if the recipient files an administrative appeal before the date described by Subdivision (1).

(d) If the retirement system has begun the adjustment of future payments or the recovery of an overpayment under Section 802.1024(a-2), the system shall discontinue the adjustment of future payments or the recovery of the overpayment beginning with the first pay cycle occurring after the date the complaint is received by the system. The system may not recommence the adjustment of future payments or the recovery of an overpayment until the date described by Subsection (c)(1) or (2), as applicable. If a complaint is resolved in favor of the person filing the complaint, not later than the 30th day after the date of the resolution, the system shall pay the person the appropriate amount.

(e) A person whose complaint is not resolved under this section must exhaust all administrative procedures provided by the retirement system. Not later than the 30th day after the date a final administrative decision is issued by the retirement system, a person aggrieved by the decision may appeal the decision to an appropriate district court.

SECTION 3. (a) Except as provided by Subsection (b) of this section, the change in law made by this Act applies to an underpayment or overpayment of benefits by a public retirement system regardless of whether the underpayment or overpayment was made before, on, or after the effective date of this Act.

(b) The change in law made by this Act does not apply to a correction, adjustment, or recovery of an overpayment that commenced before the effective date of this Act or an overpayment that was resolved by an agreement made before the effective date of this Act between a public retirement system and the recipient of the overpayment. A correction, adjustment, or recovery of an overpayment that commenced before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

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.

Representative Pickett moved to adopt the conference committee report on **HB 155**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 155** prevailed by (Record 1922): 140 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Aycoc; Bailey; Berman; Bohac; Bolton; 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; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; McCall; McClendon; McReynolds; 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; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent — Anderson; Bonnen; Burnam; Elkins; King, P.; Martinez Fischer; Menendez; Thompson.

HR 2848 - ADOPTED
(by Phillips)

The following privileged resolution was laid before the house:

HR 2848

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 1623** (certain offenses and fees imposed for operating a motor vehicle or vessel in violation of law) 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 8. Section 521.457, Transportation Code, is amended by amending Subsections (e) and (f) and adding Subsection (f-1) to read as follows:

(e) Except as provided by Subsections [Subsection] (f) and (f-1), an offense under this section is a Class C misdemeanor [punishable by:

(1) a fine of not less than \$100 or more than \$500; and

(2) confinement in county jail for a term of not less than 72 hours or more than six months].

(f) If it is shown on the trial of an offense under this section that the person has previously been convicted of an offense under this section or an offense under Section 601.371(a), as that law existed before September 1, 2003, the offense is a Class B [A] misdemeanor.

(f-1) If it is shown on the trial of an offense under this section that the license of the person has previously been suspended as the result of an offense involving the operation of a motor vehicle while intoxicated, the offense is a Class B misdemeanor.

Explanation: The change is necessary to add a provision to the bill related to the penalty for the offense of driving while license invalid due to the operation of a motor vehicle while intoxicated.

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

SECTION 9. Subchapter D, Chapter 542, Transportation Code, is amended by adding Sections 542.405 and 542.406 to read as follows:

Sec. 542.405. AMOUNT OF CIVIL PENALTY; LATE PAYMENT PENALTY. If a local authority enacts an ordinance to enforce compliance with the instructions of a traffic-control signal by the imposition of a civil or administrative penalty, the amount of:

(1) the civil or administrative penalty may not exceed \$75; and

(2) a late payment penalty may not exceed \$25.

Sec. 542.406. DEPOSIT OF REVENUE FROM CERTAIN TRAFFIC PENALTIES. (a) In this section, "photographic traffic signal enforcement system" means a system that:

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

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

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

(b) This section applies only to a civil or administrative penalty imposed on the owner of a motor vehicle by a local authority that operates or contracts for the operation of a photographic traffic signal enforcement system with respect to a highway under its jurisdiction or that operates or contracts for the operation of any other type of electronic traffic law enforcement system consisting of a camera system that automatically produces one or more recorded photographs or digital images of the license plate on a motor vehicle or the operator of a motor vehicle.

(c) Not later than the 60th day after the end of a local authority's fiscal year, after deducting amounts the local authority is authorized by Subsection (d) to retain, the local authority shall:

(1) send 50 percent of the revenue derived from civil or administrative penalties collected by the local authority under this section to the comptroller for deposit to the credit of the regional trauma account established under Section 782.002, Health and Safety Code; and

(2) deposit the remainder of the revenue in a special account in the local authority's treasury that may be used only to fund traffic safety programs, including pedestrian safety programs, public safety programs, intersection improvements, and traffic enforcement.

(d) A local authority may retain an amount necessary to cover the costs of:

(1) purchasing or leasing equipment that is part of or used in connection with the photographic traffic signal enforcement system in the local authority;

(2) installing the photographic traffic signal enforcement system at sites in the local authority, including the costs of installing cameras, flashes, computer equipment, loop sensors, detectors, utility lines, data lines, poles and mounts, networking equipment, and associated labor costs;

(3) operating the photographic traffic signal enforcement system in the local authority, including the costs of creating, distributing, and delivering violation notices, review of violations conducted by employees of the local authority, the processing of fine payments and collections, and the costs associated with administrative adjudications and appeals; and

(4) maintaining the general upkeep and functioning of the photographic traffic signal enforcement system.

(e) Chapter 133, Local Government Code, applies to fee revenue described by Subsection (c)(1).

(f) If under Section 133.059, Local Government Code, the comptroller conducts an audit of a local authority and determines that the local authority retained more than the amounts authorized by this section or failed to deposit amounts as required by this section, the comptroller may impose a penalty on the local authority equal to twice the amount the local authority:

- (1) retained in excess of the amount authorized by this section; or
- (2) failed to deposit as required by this section.

Explanation: This change is necessary to provide for the administration of a civil or administrative penalty imposed by a local authority to enforce compliance with the instructions of a traffic-control signal.

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

SECTION 13. Section 133.004, Local Government Code, is amended to read as follows:

Sec. 133.004. CIVIL FEES. This chapter applies to the following civil fees:

(1) the consolidated fee on filing in district court imposed under Section 133.151;

(2) the filing fee in district court for basic civil legal services for indigents imposed under Section 133.152;

(3) the filing fee in courts other than district court for basic civil legal services for indigents imposed under Section 133.153;

(4) the filing fees for the judicial fund imposed in certain statutory county courts under Section 51.702, Government Code;

(5) the filing fees for the judicial fund imposed in certain county courts under Section 51.703, Government Code;

(6) the filing fees for the judicial fund imposed in certain statutory probate courts under Section 51.704, Government Code;

(7) fees collected under Section 118.015;

(8) marriage license fees for the family trust fund collected under Section 118.018;

(9) marriage license or declaration of informal marriage fees for the child abuse and neglect prevention trust fund account collected under Section 118.022; ~~and~~

(10) the filing fee for the judicial fund imposed in district court, statutory county court, and county court under Section 133.154; and

(11) the portion of the civil or administrative penalty described by Section 542.406(c)(1), Transportation Code, imposed by a local authority to enforce compliance with the instructions of a traffic-control signal.

Explanation: This change is necessary to provide for the administration of a civil or administrative penalty imposed by a local authority to enforce compliance with the instructions of a traffic-control signal.

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

SECTION 14. Subtitle B, Title 9, Health and Safety Code, is amended by adding Chapter 782 to read as follows:

CHAPTER 782. REGIONAL EMERGENCY MEDICAL SERVICESSec. 782.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Commissioner" means the executive commissioner of the Health and Human Services Commission.

Sec. 782.002. REGIONAL TRAUMA ACCOUNT. (a) The regional trauma account is created as a dedicated account in the general revenue fund of the state treasury. Money in the account may be appropriated only to the commission to make distributions as provided by Section 782.003.

(b) The account is composed of money deposited to the credit of the account under Section 542.406, Transportation Code, and the earnings of the account.

(c) Sections 403.095 and 404.071, Government Code, do not apply to the account.

Sec. 782.003. PAYMENTS FROM THE REGIONAL TRAUMA ACCOUNT. (a) The commissioner shall use money appropriated from the regional trauma account established under Section 782.002 to fund uncompensated care of designated trauma facilities and county and regional emergency medical services located in the area served by the trauma service area regional advisory council that serves the local authority submitting money under Section 542.406, Transportation Code.

(b) In any fiscal year, the commissioner shall use:

(1) 96 percent of the money appropriated from the account to fund a portion of the uncompensated trauma care provided at facilities designated as state trauma facilities by the Department of State Health Services;

(2) two percent of the money appropriated from the account for county and regional emergency medical services;

(3) one percent of the money appropriated from the account for distribution to the 22 trauma service area regional advisory councils; and

(4) one percent of the money appropriated from the account to fund administrative costs of the commission.

(c) The money under Subsection (b) shall be distributed in proportion to the amount deposited to the account from the local authority.

Explanation: This change is necessary to provide that money from civil or administrative penalties imposed by a local authority to enforce compliance with the instructions of a traffic-control signal is to be used for regional emergency medical services.

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

SECTION 15. Section 542.406, Transportation Code, as added by this Act, and Section 782.002, Health and Safety Code, as added by this Act, apply to revenue received by a local authority unit of this state from the imposition of a civil or administrative penalty on or after the effective date of this Act, regardless of whether the penalty was imposed before, on, or after the effective date of this Act.

Explanation: This change is necessary to implement the changes in law that provide for the administration of a civil or administrative penalty imposed by a local authority to enforce compliance with the instructions of a traffic-control signal.

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

SECTION 16. Not later than December 1, 2007, the executive commissioner of the Health and Human Services Commission shall adopt rules to implement Chapter 782, Health and Safety Code, as added by this Act.

Explanation: This change is necessary to implement the changes in law that provide for the use of money from civil or administrative penalties imposed by a local authority to enforce compliance with the instructions of a traffic-control signal.

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

SECTION 18. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2007.

(b) Sections 9, 13, 14, 15, and 16 of this Act take effect only if **SB 1119**, Acts of the 80th Legislature, Regular Session, 2007, is enacted and becomes law.

Explanation: The change to the applicability provision of the bill is necessary to reflect the addition of SECTIONS 9, 13, 14, 15, and 16 to the conference committee report and to make the effectiveness of those SECTIONS contingent on the passage of **SB 1119**, Acts of the 80th Legislature, Regular Session, 2007.

A record vote was requested.

HR 2848 was adopted by (Record 1923): 111 Yeas, 25 Nays, 2 Present, not voting.

Yeas — Allen; Anchia; Anderson; Bailey; Berman; Bohac; Bolton; Brown, F.; Callegari; Castro; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dutton; Eiland; Eissler; Elkins; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Tourelles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hodge; Homer; Howard, C.; Howard, D.; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Mallory Caraway; Martinez; McClendon; Miles; Moreno; Morrison; Mowery; Murphy; Naishtat; O'Day; Olivo; Orr; Ortiz; Otto; Parker; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Ritter; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Taylor; Van Arsdale; Vaught; West; Woolley; Zerwas.

Nays — Alonzo; Aycock; Brown, B.; Darby; England; Harless; Harper-Brown; Hill; Hochberg; Hopson; Madden; McCall; McReynolds; Menendez; Merritt; Miller; Oliveira; Patrick; Pierson; Raymond; Riddle; Truitt; Villarreal; Vo; Zedler.

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

Absent — Bonnen; Branch; Burnam; Chavez; Dunnam; Hughes; Martinez Fischer; Noriega; Rodriguez; Talton; Thompson; Veasey.

STATEMENTS OF VOTE

When Record No. 1923 was taken, I was in the house but away from my desk. I would have voted yes.

Chavez

I was shown voting yes on Record No. 1923. I intended to vote no.

Crabb

I was shown voting yes on Record No. 1923. I intended to vote no.

Kuempel

I was shown voting no on Record No. 1923. I intended to vote yes.

Oliveira

When Record No. 1923 was taken, I was in the house but away from my desk. I would have voted yes.

Veasey

HR 2913 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 2913**, suspending the limitations on the conferees for **HB 3609**.

HR 2915 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 2915**, suspending the limitations on the conferees for **SB 11**.

HB 3066 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Truitt submitted the following conference committee report on **HB 3066**:

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 3066** 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.

Williams
Duncan

Truitt
Anchia

Uresti

Isett

Menendez

Woolley

On the part of the senate

On the part of the house

HB 3066, A bill to be entitled An Act relating to the use of political contributions to make payments in connection with the rental or purchase of certain real property; providing a criminal penalty.

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

SECTION 1. Section 253.038, Election Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) A candidate or officeholder or a specific-purpose committee for supporting, opposing, or assisting the candidate or officeholder may not knowingly make or authorize a payment from a political contribution for the rental or purchase of real property from:

(1) a person related within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to the candidate or officeholder; or

(2) a business in which the candidate or officeholder or a person described by Subdivision (1) has a participating interest of more than 10 percent, holds a position on the governing body, or serves as an officer.

SECTION 2. The heading to Section 253.038, Election Code, is amended to read as follows:

Sec. 253.038. PAYMENTS MADE TO PURCHASE REAL PROPERTY OR TO RENT CERTAIN REAL PROPERTY PROHIBITED.

SECTION 3. Section 253.038(a-1), Election Code, as added by this Act, applies to a payment made from political contributions on or after September 1, 2007, without regard to whether the payment was made under a lease or other agreement entered into before that date. A payment made from political contributions before September 1, 2007, is governed by the law in effect on the date the payment was made, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2007.

Representative Truitt moved to adopt the conference committee report on **HB 3066**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 3066** prevailed by (Record 1924): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Castro; 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; Harless; 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; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent — Burnam; Chavez; Coleman; Dunnam; Martinez Fischer; Veasey.

STATEMENTS OF VOTE

When Record No. 1924 was taken, I was in the house but away from my desk. I would have voted yes.

Chavez

When Record No. 1924 was taken, I was in the house but away from my desk. I would have voted yes.

Veasey

HB 2542 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Kolkhorst submitted the following conference committee report on **HB 2542**:

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 2542** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Estes
Hegar
Hinojosa

Kolkhorst
Aycock
R. Cook
Hardcastle
Heflin

On the part of the senate

On the part of the house

HB 2542, A bill to be entitled An Act relating to the continuation and functions of the Office of Rural Community Affairs.

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

SECTION 1. Section 487.001(1), Government Code, is amended to read as follows:

(1) "Board" [~~"Executive committee"~~] means the board [~~executive committee~~] of the Office of Rural Community Affairs.

SECTION 2. Section 487.002, Government Code, is amended to read as follows:

Sec. 487.002. SUNSET PROVISION. The Office of Rural Community Affairs is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2013 [~~2007~~].

SECTION 3. Section 487.021, Government Code, is amended to read as follows:

Sec. 487.021. BOARD [~~EXECUTIVE COMMITTEE~~]. (a) The board [~~executive committee~~] is the governing body of the office.

(b) The board [~~executive committee~~] is composed of the following 11 [~~nine~~] members:

(1) four [~~three~~] members who represent different geographic regions of the state appointed by the governor, including:

(A) two locally elected rural city or county officials or city or county employees involved with rural development; and

(B) two public members each of whom resides in a rural city or county;

(2) three public members appointed by the [~~lieutenant~~] governor from a list of nominees submitted by the lieutenant governor; and

(3) three public members appointed by the governor from a list of nominees submitted by the speaker of the house of representatives; and

(4) the commissioner of agriculture or the commissioner's designee.

(b-1) The individuals nominated by the lieutenant governor and the speaker of the house of representatives must reside in a rural city or county and be interested in rural issues. In making an appointment under Subsection (b)(2) or (3), the governor may reject one or more of the nominees on a list submitted by the lieutenant governor or the speaker of the house of representatives and request a new list of different nominees.

(c) In this section, "rural city or county" means a rural city or county as defined by the federal community development block grant nonentitlement program. [The governor, the lieutenant governor, and the speaker of the house of representatives shall each appoint at least two members who possess a strong understanding of and commitment to rural interests based on the individual's personal history, including residency, occupation, and business or civic activities.]

(d) Appointments to the board [~~executive committee~~] shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(e) The members of the board who are not serving as an additional duty of an office in state government [~~executive committee~~] serve for staggered six-year terms, with the terms of three or four members expiring February 1 of each odd-numbered year.

(f) Board [~~Executive committee~~] members receive no compensation but are entitled to reimbursement of actual and necessary expenses incurred in the performance of their duties.

(g) The governor shall designate a member [~~The members~~] of the board as the [~~executive committee annually shall elect a~~] presiding officer [~~from among the members~~] of the board to serve in that capacity at the will of the governor [~~executive committee~~].

(h) Service on the board by the commissioner of agriculture or an officer of a county or municipality is an additional duty of the individual's office.

SECTION 4. Sections 487.022(b) and (c), Government Code, are amended to read as follows:

(b) A person may not be a member of the board [~~executive committee~~] and may not be an office employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of rural affairs; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of rural affairs.

(c) A person may not be a member of the board [~~executive committee~~] or act as the general counsel to the board [~~executive committee~~] or the office if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the office.

SECTION 5. Sections 487.023 through 487.027, Government Code, are amended to read as follows:

Sec. 487.023. TRAINING FOR MEMBERS OF BOARD [~~EXECUTIVE COMMITTEE~~]. (a) A person who is appointed to and qualifies for office as a member of the board [~~executive committee~~] may not vote, deliberate, or be counted as a member in attendance at a meeting of the board [~~executive committee~~] until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the office [~~and the executive committee~~];

(2) the programs, [~~operated by the office~~;

[~~(3) the role and~~] functions, [~~of the office~~;

[~~(4) the~~] rules, [~~of the office, with an emphasis on any rules that relate to disciplinary~~] and [~~investigatory authority~~;

[~~(5) the current~~] budget of [~~for~~] the office;

(3) [~~(6)~~] the results of the most recent formal audit of the office;

(4) [~~(7)~~] the requirements of laws relating to[~~;~~

[~~(A) the~~] open meetings [~~law~~], [~~Chapter 551~~;

[~~(B) the~~] public information [~~law~~], [~~Chapter 552~~;

~~[(C) the]~~ administrative procedure ~~[law]~~, ~~[Chapter 2001]~~; and conflicts of interest

~~[(D) other laws relating to public officials, including conflict of interest laws]; and~~

(5) ~~[(8)]~~ any applicable ethics policies adopted by the office ~~[executive committee]~~ or the Texas Ethics Commission.

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

Sec. 487.024. REMOVAL. (a) It is a ground for removal from the board ~~[executive committee]~~ that a member:

(1) does not have at the time of taking office the qualifications required by Section 487.021;

(2) does not maintain during service on the board ~~[executive committee]~~ the qualifications required by Section 487.021;

(3) is ineligible for membership under Section 487.022;

(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 board ~~[executive committee]~~ meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board ~~[executive committee]~~.

(b) The validity of an action of the board ~~[executive committee]~~ is not affected by the fact that it is taken when a ground for removal of a board ~~[an executive committee]~~ member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board ~~[executive committee]~~ of the potential ground. The presiding officer shall then notify the appointing authority ~~[governor]~~ and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board ~~[executive committee]~~, who shall then notify the appointing authority ~~[governor]~~ and the attorney general that a potential ground for removal exists.

Sec. 487.025. DIVISION OF RESPONSIBILITY. The board ~~[executive committee]~~ shall develop and implement policies that clearly separate the policy-making responsibilities of the board ~~[executive committee]~~ and the management responsibilities of the executive director and staff of the office.

Sec. 487.026. EXECUTIVE DIRECTOR. (a) The board ~~[executive committee]~~ may hire an executive director to serve as the chief executive officer of the office and to perform the administrative duties of the office.

(b) The executive director serves at the will of the board ~~[executive committee]~~.

(c) The executive director may hire staff within guidelines established by the board ~~[executive committee]~~.

Sec. 487.027. PUBLIC HEARINGS. The board ~~[executive committee]~~ shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board ~~[executive committee]~~ and to speak on any issue under the jurisdiction of the office.

SECTION 6. Section 487.029, Government Code, is amended to read as follows:

Sec. 487.029. STANDARDS OF CONDUCT. The executive director or the executive director's designee shall provide to members of the board ~~[executive committee]~~ and to agency employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

SECTION 7. Section 487.030, Government Code, is amended to read as follows:

Sec. 487.030. COMPLAINTS. (a) The office shall maintain a system to promptly and efficiently act on complaints ~~[file on each written complaint]~~ filed with the office. The office shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition ~~[The file must include:~~

- ~~[(1) the name of the person who filed the complaint;~~
- ~~[(2) the date the complaint is received by the office;~~
- ~~[(3) the subject matter of the complaint;~~
- ~~[(4) the name of each person contacted in relation to the complaint;~~
- ~~[(5) a summary of the results of the review or investigation of the complaint; and~~
- ~~[(6) an explanation of the reason the file was closed, if the office closed the file without taking action other than to investigate the complaint].~~

(b) The office shall make information available describing its ~~[provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the office's policies and]~~ procedures for ~~[relating to]~~ complaint investigation and resolution.

(c) The office~~[, at least quarterly until final disposition of the complaint,]~~ shall periodically notify the complaint parties ~~[person filing the complaint and each person who is a subject of the complaint]~~ of the status of the complaint until final disposition ~~[investigation unless the notice would jeopardize an undercover investigation].~~

SECTION 8. Subchapter B, Chapter 487, Government Code, is amended by adding Sections 487.031 and 487.032 to read as follows:

Sec. 487.031. USE OF TECHNOLOGY. The board shall implement a policy requiring the office to use appropriate technological solutions to improve the office's ability to perform its functions. The policy must ensure that the public is able to interact with the office on the Internet.

Sec. 487.032. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008 for the adoption of office rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009 to assist in the resolution of internal and external disputes under the office's jurisdiction.

(b) The office's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the office.

SECTION 9. Section 487.051, Government Code, is amended to read as follows:

Sec. 487.051. POWERS AND DUTIES. (a) The office shall:

(1) assist rural communities in the key areas of economic development, community development, rural health, and rural housing [develop a rural policy for the state in consultation with local leaders representing all facets of rural community life, academic and industry experts, and state elected and appointed officials with interests in rural communities];

(2) serve as a clearinghouse for information and resources on all state and federal programs affecting rural communities [work with other state agencies and officials to improve the results and the cost effectiveness of state programs affecting rural communities through coordination of efforts];

(3) in consultation with rural community leaders, locally elected officials, state elected and appointed officials, academic and industry experts, and the interagency work group created under this chapter, identify and prioritize policy issues and concerns affecting rural communities in the state [develop programs to improve the leadership capacity of rural community leaders];

(4) make recommendations to the legislature to address the concerns affecting rural communities identified under Subdivision (3);

(5) monitor developments that have a substantial effect on rural Texas communities, especially actions of state government, and compile an annual report describing and evaluating the condition of rural communities;

(6) [~~5~~] administer the federal community development block grant nonentitlement program;

(7) [~~6~~] administer programs supporting rural health care as provided by this chapter;

(8) ~~(7)~~ perform research to determine the most beneficial and cost-effective ways to improve the welfare of rural communities;

(9) ~~(8)~~ ensure that the office qualifies as the state's office of rural health for the purpose of receiving grants from the Office of Rural Health Policy of the United States Department of Health and Human Services under 42 U.S.C. Section 254r;

(10) ~~(9)~~ manage the state's Medicare rural hospital flexibility program under 42 U.S.C. Section 1395i-4; ~~and~~

(11) ~~(10)~~ seek state and federal money available for economic development in rural areas for programs under this chapter; and

(12) in conjunction with the Department of Agriculture, regularly cross-train office employees with employees of the Department of Agriculture regarding the programs administered and services provided by each agency to rural communities.

(b) The office may require office employees who work at locations other than the central office to be based in Department of Agriculture offices.

SECTION 10. Section 487.052, Government Code, is amended to read as follows:

Sec. 487.052. RULES. The board ~~[executive committee]~~ may adopt rules as necessary to implement this chapter.

SECTION 11. Section 487.053(b), Government Code, is amended to read as follows:

(b) All gifts, grants, and donations must be accepted in an open meeting by a majority of the voting members of the board ~~[executive committee]~~ and reported in the public record of the meeting with the name of the donor and purpose of the gift, grant, or donation.

SECTION 12. Section 487.054(b), Government Code, is amended to read as follows:

(b) The board ~~[executive committee]~~ shall call the annual meeting. The board ~~[executive committee]~~ shall set the time and date of the meeting after consulting with the agency heads listed in Subsection (a).

SECTION 13. Section 487.055, Government Code, is amended to read as follows:

Sec. 487.055. ADVISORY COMMITTEES. The board ~~[executive committee]~~ may appoint advisory committees as necessary to assist the board ~~[executive committee]~~ in performing its duties. An advisory committee may be composed of private citizens and representatives from state and local governmental entities. A state or local governmental entity shall appoint a representative to an advisory committee at the request of the board ~~[executive committee]~~. Chapter 2110 does not apply to an advisory committee created under this section.

SECTION 14. Section 487.056, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The office shall obtain information on the availability of housing in rural communities throughout the state for all income levels. The office shall include the information, and the office's assessment of the information, in the office's report to the legislature.

SECTION 15. Section 487.057(b), Government Code, is amended to read as follows:

(b) The office shall submit the rural health work plan to the board [~~executive committee~~] for approval. The board [~~executive committee~~] shall approve the rural health work plan not later than August 1 of each odd-numbered year.

SECTION 16. Sections 487.059(b), (c), (e), (f), and (g), Government Code, are amended to read as follows:

(b) If a member of the board [~~executive committee~~] or a [~~another~~] committee established under this chapter, including an advisory committee, has a financial interest in an entity that applies for a monetary award, the board or committee member shall, before a vote on the monetary award, disclose the fact of the board or committee member's financial interest. The board or committee shall enter the disclosure into the minutes of the meeting at which a vote on the monetary award is taken. The board or committee member may not vote on or otherwise participate in a discussion or any other activity that relates to awarding the monetary award. If the board or committee member does not comply with this subsection, the entity is not eligible for the monetary award.

(c) If the executive director or another office employee has a financial interest in an entity that applies for a monetary award, the executive director or employee:

(1) shall, as soon as possible, disclose to the board [~~executive committee~~] the fact of the director's or employee's financial interest;

(2) may not participate in staff evaluations regarding the monetary award; and

(3) if the executive director or employee under office procedures may [~~has a~~] vote, or make a recommendation concerning a vote, on a matter that involves the monetary award:

(A) shall disclose the fact of the director's or employee's financial interest before a vote on the monetary award, which the board or committee shall enter into the minutes of the meeting at which a vote on the monetary award is taken; and

(B) may not vote on or otherwise participate in a discussion or any other activity that relates to awarding the monetary award.

(e) Subsections (f) and (g) apply only to a member of the board or a [~~executive~~] committee who is employed by:

(1) an entity that offers to enter into a contract with the office; or

(2) an entity that is under common ownership or governance with or otherwise affiliated with an entity that applies for a monetary award or offers to enter into a contract with the office.

(f) The board or ~~executive~~ committee member shall, before a vote on the monetary award or contract, disclose the fact of the member's employment by the entity. The board or ~~executive~~ committee shall enter the disclosure into the minutes of the meeting at which a vote on the monetary award or contract is taken. The board or ~~executive~~ committee member may not vote on or otherwise participate in a discussion or any other activity that relates to awarding the monetary award or contract.

(g) If the board or ~~executive~~ committee member does not comply with Subsection (f), the entity is not eligible to be awarded the monetary award or contract.

SECTION 17. Sections 487.103(a), (b), and (c), Government Code, are amended to read as follows:

(a) The selection committee shall advise the board ~~executive committee~~ on the progress of the program.

(b) The selection committee is composed of 12 members appointed by the board ~~executive committee~~.

(c) The board ~~executive committee~~ shall consider geographical representation in making appointments to the selection committee.

SECTION 18. Sections 487.104(b) and (d), Government Code, are amended to read as follows:

(b) The selection committee shall make selections based on criteria approved by the board ~~executive committee~~ and adopted as a rule of the office.

(d) The selection committee shall recommend to the board ~~executive committee~~ guidelines to be used by rural communities in the selection of students for nomination and sponsorship as outstanding rural scholars.

SECTION 19. Section 487.107, Government Code, is amended to read as follows:

Sec. 487.107. AWARDING OF LOANS. (a) The selection committee shall recommend to the board ~~executive committee~~ guidelines for the awarding of forgivable loans to outstanding rural scholars.

(b) The board ~~executive committee~~, acting on the advice of the selection committee, shall award forgivable loans to outstanding rural scholars based on the availability of money in the fund.

(c) If in any year the fund is inadequate to provide loans to all eligible applicants, the board ~~executive committee~~ shall award forgivable loans on a priority basis according to the applicants' academic performance, test scores, and other criteria of eligibility.

SECTION 20. Section 487.108(a), Government Code, is amended to read as follows:

(a) On confirmation of an outstanding rural scholar's admission to a postsecondary educational institution, or on receipt of an enrollment report of the scholar at a postsecondary educational institution, and a certification of the amount of financial support needed, the selection committee annually shall recommend to the board ~~executive committee~~ that the board ~~committee~~ award a forgivable loan to the scholar in the amount of 50 percent of the cost of the scholar's tuition, fees, educational materials, and living expenses.

SECTION 21. Sections 487.109(b), (c), and (d), Government Code, are amended to read as follows:

(b) The sponsoring community shall report to the board [~~executive committee~~] the length of time the scholar practices as a health care professional in the community.

(c) If the board [~~executive committee~~] finds that a sponsoring community is not in need of the scholar's services and that the community is willing to forgive repayment of the principal balance and interest of the scholar's loan, the board [~~executive committee~~] by rule may provide for the principal balance and interest of one year of the scholar's loan to be forgiven for each year the scholar practices in another rural community in this state.

(d) Any amount of loan principal or interest that is not forgiven under this section shall be repaid to the office with reasonable collection fees in a timely manner as provided by board [~~executive committee~~] rule.

SECTION 22. Section 487.112, Government Code, is amended to read as follows:

Sec. 487.112. ADOPTION AND DISTRIBUTION OF RULES. (a) The board [~~executive committee~~] shall adopt reasonable rules to enforce the requirements, conditions, and limitations under this subchapter.

(b) The board [~~executive committee~~] shall set the rate of interest charged on a forgivable loan under this subchapter.

(c) The board [~~executive committee~~] shall adopt rules necessary to ensure compliance with the federal Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.) concerning nondiscrimination in admissions.

SECTION 23. Section 487.154, Government Code, is amended to read as follows:

Sec. 487.154. LOANS. (a) The board [~~executive committee~~] may award forgivable educational loans to eligible students under this subchapter.

(b) The board [~~executive committee~~] may award forgivable loans to eligible students based on the availability of money in the fund.

(c) If in any year the fund is inadequate to provide loans to all eligible students, the board [~~executive committee~~] may award forgivable loans on a priority basis according to the students' academic performance, test scores, and other criteria of eligibility.

SECTION 24. Section 487.155(a), Government Code, is amended to read as follows:

(a) To be eligible to receive a loan under this subchapter, a student must:

(1) be sponsored by an eligible community;

(2) at the time of the application for the loan, be enrolled in high school or enrolled or accepted for enrollment in a postsecondary educational institution in this state;

(3) meet academic requirements as established by the board [~~executive committee~~];

(4) plan to complete a health care professional degree or certificate program;

(5) plan to practice as a health care professional in a qualified area of the state; and

(6) meet other requirements as established by the board [~~executive committee~~].

SECTION 25. Section 487.156(c), Government Code, is amended to read as follows:

(c) The board [~~executive committee~~] shall determine the percentage of educational expenses communities are required to provide under this section.

SECTION 26. Section 487.157(a), Government Code, is amended to read as follows:

(a) On confirmation of an eligible student's admission to a postsecondary educational institution, or on receipt of an enrollment report of the student at a postsecondary educational institution, and certification of the amount of financial support needed, the board [~~executive committee~~] may award a forgivable loan to the student in the amount of not more than the cost of the student's tuition, fees, educational materials, and living expenses.

SECTION 27. Section 487.158(b), Government Code, is amended to read as follows:

(b) The contract must provide that if the student does not provide the required services to the community or provides those services for less than the required time, the student is personally liable to the state for:

(1) the total amount of assistance the student receives from the office and the sponsoring community;

(2) interest on the total amount at a rate set by the board [~~executive committee~~]; and

(3) the state's reasonable expenses incurred in obtaining payment, including reasonable attorney's fees.

SECTION 28. Section 487.159(b), Government Code, is amended to read as follows:

(b) If the board [~~executive committee~~] finds that a sponsoring community is not in need of the student's services and that the community is willing to forgive repayment of the principal balance and interest of the student's loan, the board [~~executive committee~~] by rule may provide for the principal balance and interest of the student's loan to be forgiven if the student provides services in another qualified area in this state.

SECTION 29. Sections 487.161(b) and (c), Government Code, are amended to read as follows:

(b) The sponsoring community shall report to the board [~~executive committee~~] the length of time the student provides health care services in the community in accordance with the guidelines established by the board [~~executive committee~~].

(c) A postsecondary educational institution shall provide to the board [~~executive committee~~] a copy of the academic transcript of each student for whom the institution has received a release that complies with state and federal open records laws and that authorizes the provision of the transcript.

SECTION 30. Section 487.163, Government Code, is amended to read as follows:

Sec. 487.163. ADOPTION OF RULES. (a) The board [~~executive committee~~] shall adopt reasonable rules to enforce the requirements, conditions, and limitations of this subchapter.

(b) The board [~~executive committee~~] shall set the rate of interest charged on a forgivable loan under this subchapter.

(c) The board [~~executive committee~~] shall adopt rules necessary to ensure compliance with the federal Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.) concerning nondiscrimination in admissions.

SECTION 31. Sections 487.202, 487.203, and 487.204, Government Code, are amended to read as follows:

Sec. 487.202. PROGRAM. (a) The board [~~executive committee~~] shall establish and administer a program under this subchapter to increase the number of physicians providing primary care in medically underserved communities.

(b) A medically underserved community may sponsor a physician who has completed a primary care residency program and has agreed to provide primary care in the community by contributing start-up money for the physician and having that contribution matched wholly or partly by state money appropriated to the office [~~executive committee~~] for that purpose.

(c) A participating medically underserved community may provide start-up money to an eligible physician over a two-year period.

(d) The office [~~executive committee~~] may not pay more than \$25,000 to a community in a fiscal year unless the board [~~executive committee~~] makes a specific finding of need by the community.

(e) The board [~~executive committee~~] shall establish priorities so that the neediest communities eligible for assistance under this subchapter are assured the receipt of a grant.

Sec. 487.203. ELIGIBILITY. To be eligible to receive money from the office [~~executive committee~~], a medically underserved community must:

(1) apply for the money; and

(2) provide evidence satisfactory to the board [~~executive committee~~] that it has entered into an agreement with a physician for the physician to provide primary care in the community for at least two years.

Sec. 487.204. RULES. The board [~~executive committee~~] shall adopt rules necessary for the administration of this subchapter, including rules addressing:

(1) eligibility criteria for a medically underserved community;

(2) eligibility criteria for a physician;

(3) minimum and maximum community contributions to the start-up money for a physician to be matched with state money;

(4) conditions under which state money must be repaid by a community or physician;

(5) procedures for disbursement of money by the office [~~executive committee~~];

(6) the form and manner in which a community must make its contribution to the start-up money; and

(7) the contents of an agreement to be entered into by the parties, which must include at least:

(A) a credit check for an eligible physician; and

(B) community retention of interest in any property, equipment, or durable goods for seven years.

SECTION 32. Section 487.252, Government Code, is amended to read as follows:

Sec. 487.252. TEXAS HEALTH SERVICE CORPS PROGRAM. (a) The board [~~executive committee~~] shall establish a program in the office to assist communities in recruiting and retaining physicians to practice in medically underserved areas.

(b) The board [~~executive committee~~] by rule shall establish:

(1) eligibility criteria for applicants;

(2) stipend application procedures;

(3) guidelines relating to stipend amounts;

(4) procedures for evaluating stipend applications; and

(5) a system of priorities relating to the:

(A) geographic areas covered;

(B) medical specialties eligible to receive funding under the program; and

(C) level of stipend support.

SECTION 33. Section 487.253(a), Government Code, is amended to read as follows:

(a) The board [~~executive committee~~] shall adopt rules necessary to administer this subchapter, and the office shall administer the program in accordance with those rules.

SECTION 34. Section 487.351, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The office shall give priority to eligible activities in the areas of economic development, community development, rural health, and rural housing to support workforce development in awarding funding for community development block grant programs.

SECTION 35. Subchapter 1, Chapter 487, Government Code, is amended by adding Section 487.3515 to read as follows:

Sec. 487.3515. EVALUATION OF COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM. (a) The office, in consultation with the Department of Agriculture, shall review and evaluate the administration of the state's allocation of federal funds under the community development block grant nonentitlement program and, based on the results of the evaluation, streamline administration of the program and program requirements. The office shall, at a minimum, evaluate:

(1) combining program fund categories, within allowable limits provided by state statute, the General Appropriations Act, and federal law and regulations;

(2) simplifying the grant application and scoring process; and

(3) regularly reviewing and closing out aged contracts.

(b) The office shall implement program changes resulting from the evaluation that do not require statutory changes as soon as possible, but not later than the date the office publishes the next community development block grant nonentitlement program action plan.

(c) The office shall include the findings from the evaluation, program changes resulting from the evaluation, and any statutory changes needed to make additional changes in the agency's biennial report to the 81st Legislature.

(d) This section expires September 1, 2009.

SECTION 36. Section 487.353, Government Code, is amended by amending Subsections (i) and (j) and adding Subsections (k) and (l) to read as follows:

(i) The committee shall:

(1) consult with and advise the executive director on the administration and enforcement of the community development block grant program; and

(2) in consultation with the executive director and office staff, review and approve grant and loan [funding] applications and associated funding awards of eligible counties and municipalities and advise and assist the executive director regarding the allocation of program funds to those applicants.

(j) The committee may annually recommend to the executive director a formula for allocating funds to each geographic state planning region established by the governor under Chapter 391, Local Government Code. The formula must give preference to regions according to the regions' needs.

(k) An applicant for a grant, loan, or award under a community development block grant program may appeal a decision of the committee by filing a complaint with the board. The board shall hold a hearing on a complaint filed with the board under this subsection and render a decision.

(l) The committee is a governmental body for purposes of the open meetings law, Chapter 551.

SECTION 37. Section 487.401, Government Code, is amended to read as follows:

Sec. 487.401. ADMINISTRATION. (a) The board ~~[executive committee]~~ shall adopt rules that establish a procedure for designating a hospital as a rural hospital in order for the hospital to qualify for federal funds under 42 C.F.R. Part 412.

(b) At the hospital's request, the office shall designate the hospital as a rural hospital if the hospital meets the requirements for a rural hospital under the board's ~~[executive committee's]~~ rules.

SECTION 38. Section 487.451(1), Government Code, is amended to read as follows:

(1) "Health care professional" means:

(A) an advanced nurse practitioner;

(B) a dentist;

(C) a dental hygienist;

(D) a laboratory technician;

(E) a licensed vocational nurse;

(F) a licensed professional counselor;

- (G) a medical radiological technologist;
- (H) an occupational therapist;
- (I) a pharmacist;
- (J) a physical therapist;
- (K) a physician;
- (L) a physician assistant;
- (M) a psychologist;
- (N) a registered nurse;
- (O) a social worker;
- (P) a speech-language pathologist;
- (Q) a veterinarian;
- (R) a chiropractor; and
- (S) another appropriate health care professional identified by the

board [~~executive committee~~].

SECTION 39. Section 487.452(a), Government Code, is amended to read as follows:

(a) The board [~~executive committee~~], in collaboration with Area Health Education Center Programs, shall establish a community healthcare awareness and mentoring program for students to:

(1) identify high school students in rural and underserved urban areas who are interested in serving those areas as health care professionals;

(2) identify health care professionals in rural and underserved urban areas to act as positive role models, mentors, or reference resources for the interested high school students;

(3) introduce interested high school students to the spectrum of professional health care careers through activities such as health care camps and shadowing of health care professionals;

(4) encourage a continued interest in service as health care professionals in rural and underserved urban areas by providing mentors and community resources for students participating in training or educational programs to become health care professionals; and

(5) provide continuing community-based support for students during the period the students are attending training or educational programs to become health care professionals, including summer job opportunities and opportunities to mentor high school students in the community.

SECTION 40. Section 487.454, Government Code, is amended to read as follows:

Sec. 487.454. GRANTS; ELIGIBILITY. (a) Subject to available funds, the board [~~executive committee~~] shall develop and implement, as a component of the program, a grant program to support employment opportunities in rural and underserved urban areas in this state for students participating in training or educational programs to become health care professionals.

(b) In awarding grants under the program, the board [~~executive committee~~] shall give first priority to grants to training or educational programs that provide internships to students.

(c) To be eligible to receive a grant under the grant program, a person must:

(1) apply for the grant on a form adopted by the board [~~executive committee~~];

(2) be enrolled or intend to be enrolled in a training or educational program to become a health care professional;

(3) commit to practice or work, after licensure as a health care professional, for at least one year as a health care professional in a rural or underserved urban area in this state; and

(4) comply fully with any practice or requirements associated with any scholarship, loan, or other similar benefit received by the student.

(d) As a condition of receiving a grant under the program the student must agree to repay the amount of the grant, plus a penalty in an amount established by rule of the board [~~executive committee~~] not to exceed two times the amount of the grant, if the student becomes licensed as a health care professional and fails to practice or work for at least one year as a health care professional in a rural or underserved urban area in this state.

SECTION 41. Section 487.553, Government Code, is amended to read as follows:

Sec. 487.553. LOAN REIMBURSEMENT PROGRAM. The board [~~executive committee~~] shall establish a program in the office to assist communities in recruiting health professionals to practice in medically underserved communities by providing loan reimbursement for health professionals who serve in those communities.

SECTION 42. Section 487.554(a), Government Code, is amended to read as follows:

(a) The board [~~executive committee~~] shall establish a program in the office to assist communities in recruiting health professionals to practice in medically underserved communities by providing a stipend to health professionals who agree to serve in those communities.

SECTION 43. Section 487.555(e), Government Code, is amended to read as follows:

(e) A contract under this section must provide that a health professional who does not provide the required services to the community or provides those services for less than the required time is personally liable to the state for:

(1) the total amount of assistance the health professional received from the office and the medically underserved community;

(2) interest on the amount under Subdivision (1) at a rate set by the board [~~executive committee~~];

(3) the state's reasonable expenses incurred in obtaining payment, including reasonable attorney's fees; and

(4) a penalty as established by the board [~~executive committee~~] by rule to help ensure compliance with the contract.

SECTION 44. Section 487.556, Government Code, is amended to read as follows:

Sec. 487.556. POWERS AND DUTIES OF OFFICE. (a) The board [~~executive committee~~] shall adopt rules necessary for the administration of this subchapter, including guidelines for:

(1) developing contracts under which loan reimbursement or stipend recipients provide services to qualifying communities;

(2) identifying the duties of the state, state agency, loan reimbursement or stipend recipient, and medically underserved community under the loan reimbursement or stipend contract;

(3) determining a rate of interest to be charged under Section 487.555(e)(2);

(4) ensuring that a loan reimbursement or stipend recipient provides access to health services to participants in government-funded health benefits programs in qualifying communities;

(5) encouraging the use of telecommunications or telemedicine, as appropriate;

(6) prioritizing the provision of loan reimbursements and stipends to health professionals who are not eligible for any other state loan forgiveness, loan repayment, or stipend program;

(7) prioritizing the provision of loan reimbursements and stipends to health professionals who are graduates of health professional degree programs in this state;

(8) encouraging a medically underserved community served by a loan reimbursement or stipend recipient to contribute to the cost of the loan reimbursement or stipend when making a contribution is feasible; and

(9) requiring a medically underserved community served by a loan reimbursement or stipend recipient to assist the office in contracting with the loan reimbursement or stipend recipient who will serve that community.

(b) The board [~~executive committee~~] by rule may designate areas of the state as medically underserved communities.

(c) The board [~~executive committee~~] shall make reasonable efforts to contract with health professionals from a variety of different health professions.

SECTION 45. Section 487.608(a), Government Code, is amended to read as follows:

(a) The rural physician relief advisory committee is composed of the following members appointed by the board [~~executive committee~~]:

(1) a physician who practices in the area of general family medicine in a rural county;

(2) a physician who practices in the area of general internal medicine in a rural county;

(3) a physician who practices in the area of general pediatrics in a rural county;

(4) a representative from an accredited Texas medical school;

(5) a program director from an accredited primary care residency program;

(6) a representative from the Texas Higher Education Coordinating Board; and

(7) a representative from the Texas [~~State Board of~~] Medical Board [~~Examiners~~].

SECTION 46. Section 110.003(a), Health and Safety Code, is amended to read as follows:

(a) The Rural Foundation is governed by a board of five directors appointed by the board ~~[executive committee]~~ of the Office of Rural Community Affairs from individuals recommended by the executive director of the Office of Rural Community Affairs.

SECTION 47. Section 110.010, Health and Safety Code, is amended to read as follows:

Sec. 110.010. MEMORANDUM OF UNDERSTANDING. The Rural Foundation and the Office of Rural Community Affairs shall enter into a memorandum of understanding that:

(1) requires the board of directors and staff of the foundation to report to the executive director and board ~~[executive committee]~~ of the Office of Rural Community Affairs;

(2) allows the Office of Rural Community Affairs to provide staff functions to the foundation;

(3) allows the Office of Rural Community Affairs to expend funds on the foundation; and

(4) outlines the financial contributions to be made to the foundation from funds obtained from grants and other sources.

SECTION 48. (a) The nine members of the executive committee of the Office of Rural Community Affairs who are serving immediately before September 1, 2007, continue to serve as members of the governing board of the office on and after that date regardless of whether those members meet the membership requirements prescribed by Subchapter B, Chapter 487, Government Code, as amended by this Act. However, the positions of those nine members are abolished on the date on which a majority of the 11 board membership positions that are created under Section 487.021, Government Code, as amended by this Act, are filled and the appointees qualify for office.

(b) The governor shall make the 10 appointments to the board under Section 487.021, Government Code, as amended by this Act, as soon as possible on or after September 1, 2007. In making the initial appointments, the governor shall designate three members for terms expiring February 1, 2009, three members for terms expiring February 1, 2011, and four members for terms expiring February 1, 2013. Any person who served as a member of the executive committee before September 1, 2007, may be appointed to the board.

SECTION 49. 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 Kolkhorst moved to adopt the conference committee report on **HB 2542**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 2542** prevailed by (Record 1925): 147 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; 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; Harless; 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 — Bonnen.

HR 2588 - ADOPTED
(by J. Davis)

The following privileged resolution was laid before the house:

HR 2588

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 344** (additional exit conference required following inspection, survey, or investigation of, and temporary change of ownership licenses for, certain facilities) 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 2. Section 242.0336, Health and Safety Code, is amended by amending Subsections (a) and (c) through (g) and adding Subsections (b-1) through (b-5), (c-1), and (d-1) to read as follows:

(a) For purposes of this section, a temporary change of ownership license is a temporary 90-day license issued to an applicant who proposes to become the new operator of an institution existing on the date the application is filed.

(b-1) Except as provided by Subsection (b-2), the department may not issue a temporary change of ownership license before the 31st day after the date the department has received both:

(1) the application for the license; and

(2) notification, in writing, of the intent of the institution's existing license holder to transfer operation of the institution to the applicant beginning on a date specified by the applicant.

(b-2) Notwithstanding Section 242.0335, the department shall establish criteria under which the department may waive the 30-day requirement or the notification requirement of Subsection (b-1). The criteria may include the occurrence of forcible entry and detainer, death, or divorce or other events that affect the ownership of the institution by the existing license holder.

(b-3) After receipt of an application or written notification described by Subsection (b-1), the department may place a hold on payments to the existing license holder in an amount not to exceed the average of the monthly vendor payments paid to the facility, as determined by the department. The department shall release funds to the previous license holder not later than the 120th day after the date on which the final reporting requirements are met and any resulting informal reviews or formal appeals are resolved. The department may reduce the amount of funds released to the previous license holder by the amount owed to the department or the Health and Human Services Commission under the previous license holder's Medicaid contract or license.

(b-4) The executive commissioner of the Health and Human Services Commission shall adopt rules for the department that define a change of ownership. In adopting the rules, the executive commissioner shall consider:

(1) the proportion of ownership interest that is being transferred to another person;

(2) the addition or removal of a stockholder, partner, owner, or other controlling person;

(3) the reorganization of the license holder into a different type of business entity; and

(4) the death or incapacity of a stockholder, partner, or owner.

(b-5) The executive commissioner may adopt rules for the department that require a license holder to notify the department of any change, including a change that is not a change of ownership, as that term is defined by rules adopted under Subsection (b-4). Nothing in this section prevents the department from acting under Section 242.061 or any other provision of this chapter.

(c) The department shall issue or deny a temporary change of ownership license not later than the 31st ~~30th~~ day after the date of receipt of the completed application. The effective date of a temporary change of ownership license issued under this section is the date requested in the application unless:

(1) the department does not receive the application and written notification described by Subsection (b-1) at least 30 days before that date; and

(2) no waiver under Subsection (b-2) applies.

(c-1) If the department does not receive the application and written notification required by Subsection (b-1) at least 30 days before the effective date requested in the application and Subsection (b-2) does not apply, the effective date of the temporary change of ownership license is the 31st day after the date the department receives both the application and the notification.

(d) Except as provided in Subsection (d-1), after ~~[After]~~ the department issues a temporary change of ownership license to the applicant, the department shall conduct an inspection or survey of the nursing facility under Section 242.043 as soon as reasonably possible. During the period between the issuance of the temporary license and the inspection or survey of the nursing facility or desk review under Subsection (d-1), the department may not place a hold on vendor payments to the temporary license holder.

(d-1) The department shall establish criteria under which a desk review of the facility's compliance with applicable requirements may be substituted for the on-site inspection or survey under Subsection (d).

(e) After conducting an inspection or survey under Subsection (d) or a desk review under Subsection (d-1), the department shall issue a license under Section 242.033 to the temporary change of ownership license holder if the nursing facility passes the desk review, inspection, or survey and the applicant meets the requirements of Section 242.033. If the nursing facility fails to pass the desk review, inspection, or survey or the applicant fails to meet the requirements of Section 242.033, the department may:

(1) place a hold on vendor payments to the temporary change of ownership license holder; and

(2) take any other action authorized under this chapter.

(f) If the applicant meets the requirements of Section 242.033 and the nursing facility passes a desk review, ~~[an]~~ initial inspection, or ~~[a]~~ subsequent inspection before the temporary change of ownership license expires, the license issued under Section 242.033 is considered effective on the date the department determines under Subsection (c) or (c-1) ~~[requested in the application for a temporary change of ownership]~~.

(g) A temporary change of ownership license issued under Subsection (b) expires on the 90th ~~[91st]~~ day after the effective date established under Subsection (c) or (c-1) ~~[date the license was issued]~~.

Explanation: The addition of the SECTION to the bill is necessary to address a temporary change of ownership licenses for certain facilities.

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

SECTION 7. (a) As soon as practicable after the effective date of this Act, the executive commissioner of the Health and Human Services Commission shall adopt the rules required by Section 242.0336, Health and Safety Code, as amended by this Act.

(b) The changes in law made by this Act to Section 242.0336, Health and Safety Code, apply only to a temporary change of ownership license application received by the Department of Aging and Disability Services on or after September 1, 2007. An application received by the department before September 1, 2007, is governed by the law in effect at the time the application is received, and the former law is continued in effect for that purpose.

Explanation: The addition of this provision is necessary to properly implement the addition of SECTION 2 to the conference committee report.

HR 2588 was adopted.

SB 344 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative J. Davis submitted the conference committee report on **SB 344**.

Representative J. Davis moved to adopt the conference committee report on **SB 344**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 344** prevailed by (Record 1926): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycocock; Bailey; 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; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; 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; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; 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; 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 — Bonnen; Flores; Hughes; McClendon; Solomons.

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 1).

**HR 2679 - ADOPTED
(by Phillips)**

The following privileged resolution was laid before the house:

HR 2679

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 1154** (registration and regulation of metal recycling entities; providing penalties) 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 change the text of SECTION 2 of the bill by adding new Subdivision (3), Section 1956.002, Occupations Code, to read as follows:

(3) the transport or hauling of recyclable materials to or from the metal recycling entity.

Explanation: The addition of the subdivision is necessary to provide that the chapter does not apply to the transport or hauling of recyclable materials to or from the metal recycling entity. House Rule 13, Section 9(a)(4), is suspended to permit the committee to change the text of SECTION 2 of the bill by adding new Subsections (b-1), (c), (d), and (e), Section 1956.003, Occupations Code, to read as follows:

House Rule 13, Section 9(a)(4), is suspended to permit the committee to change the text of SECTION 2 of the bill by adding new Subsections (b-1), (c), (d), and (e), Section 1956.003, Occupations Code, to read as follows:

(b-1) A municipality or political subdivision of this state, other than a county, may not increase the local license or permit fee imposed on a metal recycling facility to an amount that exceeds 25 percent of the fee charged by the municipality or political subdivision on January 1, 2007. This subsection expires January 1, 2010.

(c) A county, municipality, or political subdivision of this state that issues a license or permit to a business as authorized under Subsection (b) shall submit to the department in the manner required by the department information on each business that is issued a license or permit.

(d) A municipality or political subdivision of this state, other than a county, may not increase the local license or permit fee imposed on a metal recycling facility unless the increase is approved by the local governing body. A request for an increase in the local license or permit fee must be based on the costs associated with law enforcement and administration of the licensing or permitting program. The municipality or political subdivision must submit a report to the department on the law enforcement and administrative costs associated with the fee increase.

(e) A county may increase the local license or permit fee imposed on a metal recycling facility one additional time before the second anniversary of the date of the initial fee increase. The fee increase must be based on the average cost charged by municipalities statewide.

Explanation: The addition of the provisions to the bill is necessary to authorize and regulate local metal recycling entity licenses and permits.

House Rule 13, Section 9(a)(4), is suspended to permit the committee to change the text of SECTION 2 of the bill by adding new Subchapters A-1 and A-2, Chapter 1956, Occupations Code, to read as follows:

SUBCHAPTER A-1. POWERS AND DUTIES

Sec. 1956.011. ADMINISTRATION OF CHAPTER. The department shall administer this chapter.

Sec. 1956.012. DEPARTMENT STAFF. The department may employ administrative and clerical staff as necessary to carry out this chapter.

Sec. 1956.013. RULES. The commission may adopt rules to administer this chapter, including rules:

(1) establishing minimum requirements for registration under this chapter; and

(2) adopting forms required by this chapter.

Sec. 1956.014. FEES; REPORTS. (a) The commission by rule shall prescribe fees in reasonable amounts sufficient to cover the costs of administering this chapter, including fees for:

(1) an initial application for a certificate of registration;

(2) issuance of a certificate of registration;

(3) issuance of a renewal certificate of registration; and

(4) issuance of a duplicate certificate of registration or duplicate renewal certificate of registration.

(b) The commission may not impose a fee for issuance of a certificate of registration that exceeds \$250 annually. The department shall report annually to the legislature, not later than December 1, any costs associated with administering this chapter that are not covered by the fees assessed under this chapter.

(c) The department annually shall submit to both houses of the legislature a report on the number of metal recycling entities who have complied with the registration requirements under this chapter and the total number of metal recycling entities identified statewide. The report must include the information on metal recycling entities submitted to the department by municipalities, counties, and other political subdivisions of this state.

(d) Not later than March 1, 2008, the department shall submit to both houses of the legislature a report on the actual costs incurred by the department in administering this chapter. This subsection expires January 1, 2009.

Sec. 1956.015. STATEWIDE ELECTRONIC REPORTING SYSTEM. (a) The department shall establish a statewide electronic reporting system to track the sales of regulated metal reported to the department under Section 1956.036.

(b) The department shall post a summary of the reports provided to the department under Section 1956.036 on the department's Internet website. The summary must include by county or region the frequency with which a person presents regulated materials for sale to a metal recycling entity. The summary may not identify any person to which the metal recycling entity sells the regulated materials.

(c) Subsection (b) does not apply to regulated material sold by a utility company, municipality, manufacturer, railroad, cemetery, cable or satellite entity, or other business entity that routinely has access to regulated metal.

(d) The department shall maintain the confidentiality of information provided under this section that relates to the financial condition or business affairs of a metal recycling entity or that is otherwise commercially sensitive. The confidential information is not subject to disclosure under Chapter 552, Government Code.

[Sections 1956.016-1956.020 reserved for expansion]

SUBCHAPTER A-2. CERTIFICATE OF REGISTRATION

Sec. 1956.021. REGISTRATION REQUIRED. A person may not act as a metal recycling entity or represent to the public that the person is a metal recycling entity unless the person is registered under this chapter.

Sec. 1956.022. ISSUANCE OF CERTIFICATE; QUALIFICATIONS. (a) The department shall issue a certificate of registration to an applicant who:

(1) applies and pays a registration fee; and

(2) presents any relevant evidence relating to the applicant's qualifications as required by commission rule.

(b) The commission by rule may establish qualifications for the holder of a certificate of registration under this chapter, which may include accepting copies of a license or permit issued by a county or municipality authorizing a metal recycling entity to conduct business in that county or municipality.

Sec. 1956.023. TERM OF CERTIFICATE. (a) A certificate of registration is valid for two years after the date of issuance.

(b) The department shall adopt a system under which certificates of registration expire and are renewed on various dates.

(c) Not later than the 45th day before the date a person's certificate of registration is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

(d) A person whose certificate of registration has expired may not make a representation for which a certificate of registration is required under Section 1956.021 or perform collections services until the certificate has been renewed.

Sec. 1956.024. RENEWAL OF CERTIFICATE. (a) To renew a certificate of registration, a person must submit an application for renewal in the manner prescribed by the department.

(b) A person who is otherwise eligible to renew a certificate of registration may renew an unexpired certificate by paying the required renewal fee to the department before the expiration date of the certificate.

(c) A person whose certificate of registration has been expired for 90 days or less may renew the certificate by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(d) A person whose certificate of registration has been expired for more than 90 days but less than one year may renew the certificate by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(e) A person whose certificate of registration has been expired for one year or more may not renew the certificate. The person may obtain a new certificate of registration by complying with the requirements and procedures, including the examination requirements, for an original certificate.

Explanation: The addition of the subchapters is necessary to authorize the Texas Department of Public Safety and Public Safety Commission to administer the chapter, employ staff, adopt rules, prescribe fees, issue reports, establish a statewide electronic reporting system, and register metal recycling entities.

House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following:

SECTION 4. Chapter 1956, Occupations Code, is amended by adding Subchapters D and E to read as follows:

SUBCHAPTER D. DISCIPLINARY PROCEDURES

Sec. 1956.151. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION.

The department shall deny an application for a certificate of registration, suspend or revoke a certificate of registration, or reprimand a person who is registered under this chapter if the person:

- (1) obtains a certificate of registration by means of fraud, misrepresentation, or concealment of a material fact;
- (2) sells, barters, or offers to sell or barter a certificate of registration;
- (3) violates a rule adopted under this chapter; or
- (4) violates Section 1956.021.

Sec. 1956.152. INVESTIGATION. Within the limits of available resources, the department may investigate:

- (1) a person who engages in a practice that violates this chapter; and
- (2) a complaint filed with the department against a person registered under this chapter.

Sec. 1956.153. HEARING. (a) A person whose application for a certificate of registration is denied, whose certificate of registration is suspended or revoked, or who is reprimanded is entitled to a hearing before the department if the person submits to the department a written request for the hearing.

(b) A hearing is governed by department rules for a contested hearing and by Chapter 2001, Government Code.

[Sections 1956.154-1956.200 reserved for expansion]

SUBCHAPTER E. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1956.201. ENFORCEMENT PROCEEDINGS; INJUNCTION. (a) The department, the attorney general, or the district, county, or city attorney for the county or municipality in which an alleged violation of this chapter occurs may, on receipt of a verified complaint, bring an appropriate administrative or judicial proceeding to enforce this chapter or a rule adopted under this chapter.

(b) The attorney general or an attorney representing the state may initiate an action for an injunction to prohibit a person from violating this chapter or a rule adopted under this chapter.

Sec. 1956.202. CIVIL PENALTY. (a) A person who violates this chapter or a rule adopted under this chapter is liable to this state for a civil penalty of not more than \$1,000 for each violation.

(b) The amount of the penalty shall be based on:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter a future violation; and
- (4) any other matter that justice may require.

(c) The attorney general may sue to collect a civil penalty under this section. In the suit the attorney general may recover, on behalf of the state, the reasonable expenses incurred in obtaining the penalty, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses.

Sec. 1956.203. CRIMINAL PENALTY FOR CERTAIN SOLICITATION.

(a) A person commits an offense if the person solicits the purchase of regulated material at a location other than a business location at which the material is produced as a by-product in the ordinary course of that business.

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

Explanation: The addition of the subchapters is necessary to authorize the Texas Department of Public Safety to take disciplinary action and to conduct an investigation and to provide for the imposition of penalties and enforcement provisions.

House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following:

SECTION 5. Subdivision (1), Section 1956.101, Occupations Code, is repealed.

Explanation: The repeal of a definition applicable to a subchapter is necessary to conform to the addition of a definition applicable to the entire subchapter.

House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following:

SECTION 6. (a) Not later than January 1, 2008, the Public Safety Commission shall adopt the rules necessary to implement the changes in law made by this Act to Chapter 1956, Occupations Code.

(b) Not later than April 1, 2008, the Department of Public Safety of the State of Texas shall establish the statewide reporting system to track the sales of regulated metal as required under Chapter 1956, Occupations Code, as amended by this Act.

Explanation: The addition of SECTION 6 is necessary to reflect the addition of SECTION 5 to the conference committee report.

House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following:

SECTION 7. Notwithstanding Section 1956.021, Occupations Code, as added by this Act, a person is not required to hold a certificate of registration as a metal recycling entity under Chapter 1956, Occupations Code, as amended by this Act, before April 1, 2008.

Explanation: The addition is necessary to reflect the addition of the registration provisions to the conference committee report.

HR 2679 was adopted.

SB 1154 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Phillips submitted the conference committee report on **SB 1154**.

Representative Phillips moved to adopt the conference committee report on **SB 1154**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 1154** prevailed by (Record 1927): 144 Yeas, 0 Nays, 3 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycok; Bailey; 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; 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; Zerwas.

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

Absent — Bonnen; Rose; Zedler.

HB 2034 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative England submitted the following conference committee report on **HB 2034**:

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 2034** 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.

Williams
Hinojosa
Uresti
Shapiro

England
McReynolds
Madden
Oliveira
Haggerty

On the part of the senate

On the part of the house

HB 2034, A bill to be entitled An Act relating to sex offender treatment and civil commitment.

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

SECTION 1. Section 110.001, Occupations Code, is amended by amending Subdivisions (6) and (7) and adding Subdivision (8) to read as follows:

(6) "Sex offender" means a person who:

(A) is convicted of committing or adjudicated to have committed a sex crime under state or federal law;

(B) is awarded deferred adjudication for a sex crime under state or federal law; or

(C) is convicted of, adjudicated to have committed, or awarded deferred adjudication for an offense that is based on sexually motivated conduct ~~[admits to having violated state or federal law with regard to sexual conduct; or~~

~~[(D) experiences or evidences a paraphilic disorder as defined by the Revised Diagnostic and Statistical Manual, including any subsequent revision of that manual].~~

(7) "Sex offender treatment provider" means a person, licensed by the council and recognized based on training and experience to provide assessment and treatment to adult sex offenders or juveniles with sexual behavioral problems who have been convicted, adjudicated, awarded deferred adjudication, or referred by a state agency or a court, and licensed in this state ~~[or certified]~~ to practice as ~~[in this state, including]~~ a physician, psychiatrist, psychologist, psychological associate, provisionally licensed psychologist, licensed professional counselor, licensed professional counselor intern, licensed marriage and family therapist, licensed marriage and family associate, licensed clinical social worker, licensed master ~~[or]~~ social worker under a clinical supervision plan approved by the Texas State Board of Social Worker Examiners, or advanced practice nurse recognized as a psychiatric clinical nurse specialist or psychiatric mental health nurse practitioner, who provides mental health or medical services for rehabilitation of sex offenders.

(8) "Sexually motivated conduct" has the meaning assigned by Section 841.002, Health and Safety Code.

SECTION 2. Subchapter A, Chapter 110, Occupations Code, is amended by adding Section 110.002 to read as follows:

Sec. 110.002. APPLICATION OF CHAPTER. (a) This chapter does not apply to a person licensed to practice in this state who provides adjunct therapy.

(b) This chapter does not apply to the prescribing of a drug, remedy, or clinical supply by a physician licensed under Subtitle B.

SECTION 3. Section 110.158, Occupations Code, is amended to read as follows:

Sec. 110.158. RULEMAKING. (a) The council may adopt rules consistent with this chapter. In adopting rules, the council shall:

(1) consider the rules and procedures of the board and the department; and

(2) adopt procedural rules consistent with similar existing rules and procedures of the board or the department.

(b) A sex offender treatment provider licensed under this chapter is subject to the rules of the council, in relation to the person's provision of sex offender treatment, rather than the rules of the licensing entity by which the provider is licensed or otherwise regulated. A sex offender treatment provider who acts in conformance with the rules, policies, and procedures of the council is not subject to any administrative sanction against the provider by the licensing entity by which the provider is licensed or otherwise regulated.

SECTION 4. Section 110.301, Occupations Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) A person may not provide sex offender treatment [~~a rehabilitation service~~] or act as a sex offender treatment provider unless the person is licensed under this chapter.

(c) This section does not apply to a physician whose treatment of a sex offender is limited to prescribing medication to the sex offender.

SECTION 5. Section 841.002, Health and Safety Code, is amended by amending Subdivisions (1) and (5) and adding Subdivision (3-a) to read as follows:

(1) "Attorney representing the state" means an attorney employed by the civil division of the special [prison] prosecution unit to initiate and pursue a civil commitment proceeding under this chapter.

(3-a) "Civil commitment proceeding" means a trial or hearing conducted under Subchapter D, F, or G.

(5) "Predatory act" means an act [~~that is committed for the purpose of victimization and that is~~] directed toward individuals, including family members.[~~;~~

~~[(A) a stranger;~~

~~[(B) a person of casual acquaintance with whom no substantial relationship exists; or~~

~~[(C) a person with whom a relationship has been established or promoted]~~ for the primary purpose of victimization.

SECTION 6. Section 841.004, Health and Safety Code, is amended to read as follows:

Sec. 841.004. SPECIAL [PRISON] PROSECUTION UNIT. The civil [A special] division of the special [prison] prosecution unit, separate from that part of the unit responsible for prosecuting criminal cases, is responsible for initiating and pursuing a civil commitment proceeding under this chapter.

SECTION 7. Section 841.061, Health and Safety Code, is amended by adding Subsection (g) to read as follows:

(g) A judge assigned to preside over a trial under this subchapter is not subject to an objection under Section 74.053, Government Code, other than an objection made under Section 74.053(d), Government Code.

SECTION 8. Section 841.085, Health and Safety Code, is amended to read as follows:

Sec. 841.085. CRIMINAL PENALTY; PROSECUTION OF OFFENSE.

(a) A person commits an offense if, after having been adjudicated and civilly committed as a sexually violent predator under this chapter, the person violates a civil commitment requirement imposed under Section 841.082.

(b) An offense under this section is a felony of the third degree.

(c) At the request of the local prosecuting attorney, an attorney employed by the civil division of the special prosecution unit described by Section 841.004 may assist in the trial of an offense under this section.

SECTION 9. Section 841.147, Health and Safety Code, is amended to read as follows:

Sec. 841.147. IMMUNITY. The following persons are immune from liability for good faith conduct under this chapter:

(1) an employee or officer of the Texas Department of Criminal Justice, the ~~[Texas] Department of State Health Services [Mental Health and Mental Retardation]~~, the Department of Aging and Disability Services ~~[Texas Department of Health]~~, or the council;

(2) a member of the multidisciplinary team established under Section 841.022;

(3) an employee of the civil division of the special ~~[prison]~~ prosecution unit charged with initiating and pursuing civil commitment proceedings under this chapter; and

(4) a person providing, or contracting, appointed, or volunteering to perform, a tracking service or another service under this chapter.

SECTION 10. Chapter 13, Code of Criminal Procedure, is amended by adding Article 13.315 to read as follows:

Art. 13.315. FAILURE TO COMPLY WITH SEXUALLY VIOLENT PREDATOR CIVIL COMMITMENT REQUIREMENT. An offense under Section 841.085, Health and Safety Code, may be prosecuted in the county in which any element of the offense occurs or in Montgomery County.

SECTION 11. Section 110.001(5), Occupations Code, is repealed.

SECTION 12. (a) Except as provided by Subsection (b) of this section, the change in law made by this Act applies only to an individual who on or after September 1, 2007, is serving a sentence in the Texas Department of Criminal Justice or is committed to the Department of State Health Services or the Department of Aging and Disability Services for an offense committed before, on, or after the effective date of this Act.

(b) The change in law made by this Act in adding Section 841.061(g), Health and Safety Code, applies to a petition alleging predator status that is filed on or after the effective date of this Act.

SECTION 13. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2007.

(b) Notwithstanding any other provision of this Act, Section 841.061(g), Health and Safety Code, as added by 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, that section takes effect September 1, 2007.

Representative England moved to adopt the conference committee report on **HB 2034**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 2034** prevailed by (Record 1928): 142 Yeas, 2 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; Berman; Bohac; 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; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn;

or the execution of an executory contract binding the purchaser to purchase the property, an option contract, or other contract, the person provides the purchaser and each lienholder a separate written disclosure statement in at least 12-point type that:

(1) identifies the property and includes the name, address, and phone number of each lienholder;

(2) states the amount of the debt that is secured by each lien;

(3) specifies the terms of any contract or law under which the debt that is secured by the lien was incurred, including, as applicable:

(A) the rate of interest;

(B) the periodic installments required to be paid; and

(C) the account number;

(4) indicates whether the lienholder has consented to the transfer of the property to the purchaser;

(5) specifies the details of any insurance policy relating to the property, including:

(A) the name of the insurer and insured;

(B) the amount for which the property is insured; and

(C) the property that is insured;

(6) states the amount of any property taxes that are due on the property;

and

(7) includes a statement at the top of the disclosure in a form substantially similar to the following:

WARNING: ONE OR MORE RECORDED LIENS HAVE BEEN FILED THAT MAKE A CLAIM AGAINST THIS PROPERTY AS LISTED BELOW. IF A LIEN IS NOT RELEASED AND THE PROPERTY IS CONVEYED WITHOUT THE CONSENT OF THE LIENHOLDER, IT IS POSSIBLE THE LIENHOLDER COULD DEMAND FULL PAYMENT OF THE OUTSTANDING BALANCE OF THE LIEN IMMEDIATELY. YOU MAY WISH TO CONTACT EACH LIENHOLDER FOR FURTHER INFORMATION AND DISCUSS THIS MATTER WITH AN ATTORNEY.

(b) A violation of this section does not invalidate a conveyance. Except as provided by Subsections (c) and (d), if a contract is entered into without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason on or before the seventh day after the date the purchaser receives the notice in addition to other remedies provided by this section or other law.

(c) This section does not apply to a transfer:

(1) under a court order or foreclosure sale;

(2) by a trustee in bankruptcy;

(3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;

(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the real property by a deed in lieu of foreclosure;

(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(6) from one co-owner to one or more other co-owners;

(7) to a spouse or to a person or persons in the lineal line of consanguinity of one or more of the transferors;

(8) between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to one of those decrees;

(9) to or from a governmental entity;

(10) where the purchaser obtains a title insurance policy insuring the transfer of title to the real property; or

(11) to a person who has purchased, conveyed, or entered into contracts to purchase or convey an interest in real property four or more times in the preceding 12 months.

(d) A violation of this section is not actionable if the person required to give notice reasonably believes and takes any necessary action to ensure that each lien for which notice was not provided will be released on or before the 30th day after the date on which title to the property is transferred.

Sec. 5.017. FEE FOR FUTURE CONVEYANCE OF RESIDENTIAL REAL PROPERTY AND RELATED LIEN PROHIBITED. (a) In this section, "property owners' association" has the meaning assigned by Section 209.002.

(b) A deed restriction or other covenant running with the land applicable to the conveyance of residential real property that requires a transferee of residential real property or the transferee's heirs, successors, or assigns to pay a declarant or other person imposing the deed restriction or covenant on the property or a third party designated by a transferor of the property a fee in connection with a future transfer of the property is prohibited. A deed restriction or other covenant running with the land that violates this section or a lien purporting to encumber the land to secure a right under a deed restriction or other covenant running with the land that violates this section is void and unenforceable. For purposes of this section, a conveyance of real property includes a conveyance or other transfer of an interest or estate in residential real property.

(c) This section does not apply to a deed restriction or other covenant running with the land that requires a fee associated with the conveyance of property in a subdivision that is payable to:

(1) a property owners' association that manages or regulates the subdivision or the association's managing agent if the subdivision contains more than one platted lot;

(2) an entity organized under Section 501(c)(3), Internal Revenue Code of 1986; or

(3) a governmental entity.

SECTION 2. The change in law made by this Act applies only to a transfer of property that occurs or a contract entered into on or after the effective date of this Act. A transfer of property that occurs or a contract entered into before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect January 1, 2008.

HB 2207 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE VAN ARSDALE: Representative Gallego, is it correct that **HB 2207** prohibits transfer fees for certain conveyances of residential real property, but that the bill exempts from that prohibition transfer fees payable to certain property owners' association in Sec. 5.107(c)(1)?

REPRESENTATIVE GALLEGO: Yes, that is correct.

VAN ARSDALE: For purposes of legislative intent, is it your intent that an exempted property owners' association described in Sec. 5.107(c)(1) would include an association that is a non-membership corporation providing for the maintenance of common areas and for which the applicable dedicatory instrument requires the fee to be held in a segregated account for the benefit of the residents of the subdivision?

GALLEGO: Yes, that is correct. That association would also be exempt under Sec. 5.107(c)(1).

Representative Gallego moved to adopt the conference committee report on **HB 2207**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 2207** prevailed by (Record 1929): 144 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycok; Bailey; 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 Tourelles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; 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; Kruse; 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; 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 — Bonnen; Hughes; Olivo; Puente.

STATEMENT OF VOTE

When Record No. 1929 was taken, I was in the house but away from my desk. I would have voted yes.

Hughes

HR 2921 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 2921**, suspending the limitations on the conferees for **SB 3**.

HB 4139 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Flynn submitted the following conference committee report on **HB 4139**:

Austin, Texas, May 26, 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 4139** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Deuell
Hinojosa
Watson
Wentworth

Flynn
Berman
R. Cook
Hartnett
Hopson

On the part of the senate

On the part of the house

HB 4139, A bill to be entitled An Act relating to the creation of a county court at law in Van Zandt County.

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

SECTION 1. Subchapter C, Chapter 25, Government Code, is amended by adding Section 25.2361 to read as follows:

Sec. 25.2361. VAN ZANDT COUNTY. Van Zandt County has one statutory county court, the County Court at Law of Van Zandt County.

SECTION 2. The County Court at Law of Van Zandt County is created January 1, 2011.

SECTION 3. This Act takes effect January 1, 2011.

Representative Flynn moved to adopt the conference committee report on **HB 4139**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 4139** prevailed by (Record 1930): 144 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; 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; Harless; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; 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; 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 — Bonnen; Isett; Paxton; Thompson.

STATEMENT OF VOTE

When Record No. 1930 was taken, I was in the house but away from my desk. I would have voted yes.

Paxton

SB 199 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Rose submitted the conference committee report on **SB 199**.

Representative Rose moved to adopt the conference committee report on **SB 199**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 199** prevailed by (Record 1931): 145 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; Berman; Bohac; Bolton; Branch; Brown, B.; Brown, F.; Burnam; Callegari; 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; Harless; 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 — Bonnen; Castro; Corte.

SB 1562 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative P. King submitted the conference committee report on **SB 1562**.

Representative P. King moved to adopt the conference committee report on **SB 1562**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 1562** prevailed by (Record 1932): 136 Yeas, 6 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; Berman; Bohac; Bolton; 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; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; Hartnett; Hernandez; Herrero; 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; Madden; Mallory Caraway; Martinez; Martinez Fischer; McReynolds; Menendez; Merritt; Miles; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; 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 — Harper-Brown; Hilderbran; Macias; Miller; O'Day; Phillips.

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

Absent — Bonnen; Branch; Flores; Heflin; McCall; McClendon.

STATEMENT OF VOTE

I was shown voting yes on Record No. 1932. I intended to vote no.

B. Brown

HB 1481 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Castro submitted the following conference committee report on **HB 1481**:

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 1481** 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
Watson
Harris
Uresti

Rodriguez
Chavez
Gattis
Riddle
Castro

On the part of the senate

On the part of the house

HB 1481, A bill to be entitled An Act relating to procedures for a suit affecting the parent-child relationship involving a child in the conservatorship of the Department of Family and Protective Services.

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

SECTION 1. Section 102.006, Family Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as provided by Subsections ~~[Subsection]~~ (b) and (c), if the parent-child relationship between the child and every living parent of the child has been terminated, an original suit may not be filed by:

- (1) a former parent whose parent-child relationship with the child has been terminated by court order;
- (2) the father of the child; or
- (3) a family member or relative by blood, adoption, or marriage of either a former parent whose parent-child relationship has been terminated or of the father of the child.

(c) The limitations on filing suit imposed by this section do not apply to an adult sibling of the child, a grandparent of the child, an aunt who is a sister of a parent of the child, or an uncle who is a brother of a parent of the child if the adult sibling, grandparent, aunt, or uncle files an original suit or a suit for modification requesting managing conservatorship of the child not later than the 90th day after the date the parent-child relationship between the child and the parent is terminated in a suit filed by the Department of Family and Protective Services requesting the termination of the parent-child relationship.

SECTION 2. Sections 263.401(a), (b), and (c), Family Code, are amended to read as follows:

(a) Unless the court has commenced the trial on the merits ~~[rendered a final order]~~ or granted an extension under Subsection (b), on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator, the court shall dismiss the suit affecting the parent-child relationship filed by the department that requests termination of the parent-child relationship or requests that the department be named conservator of the child.

(b) Unless the court has commenced the trial on the merits, the ~~[The]~~ court may not retain the suit on the court's docket after the time described by Subsection (a) unless the court finds that extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of the department and that continuing the appointment of the department as temporary managing conservator is in the best interest of the child. If the court makes those findings, the court may retain the suit on the court's docket for a period not to exceed 180 days after the time described by Subsection (a). If the court retains the suit on the court's docket, the court shall render an order in which the court:

(1) schedules the new date on which the suit will be dismissed if the trial on the merits has not commenced, which date must be ~~[for dismissal of the suit]~~ not later than the 180th day after the time described by Subsection (a);

(2) makes further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit; and

(3) sets the trial on the merits ~~[a final hearing]~~ on a date not later than the date specified under Subdivision (1) ~~[that allows the court to render a final order before the required date for dismissal of the suit under this subsection].~~

(c) If the court grants an extension but does not commence the trial on the merits ~~[render a final order or dismiss the suit on or]~~ before the required date for dismissal under Subsection (b), the court shall dismiss the suit. The court may not grant an additional extension that extends the suit beyond the required date for dismissal under Subsection (b).

SECTION 3. Section 263.402(b), Family Code, is amended to read as follows:

(b) A party to a suit under this chapter who fails to make a timely motion to dismiss the suit ~~[or to make a motion requesting the court to render a final order before the deadline for dismissal]~~ under this subchapter waives the right to object to the court's failure to dismiss the suit. A motion to dismiss under this subsection is timely if the motion is made before the ~~[department has introduced all of the department's evidence, other than rebuttal evidence, at the]~~ trial on the merits commences.

SECTION 4. Sections 263.403(b) and (c), Family Code, are amended to read as follows:

(b) If the court renders an order under this section, the court shall:

(1) include in the order specific findings regarding the grounds for the order; and

(2) schedule a new date, not later than the 180th day after the date the temporary order is rendered, for dismissal of the suit unless a trial on the merits has commenced.

(c) If a child placed with a parent under this section must be moved from that home by the department before the dismissal of the suit or the commencement of the trial on the merits [~~rendering of a final order~~], the court shall, at the time of the move, schedule a new date for dismissal of the suit unless a trial on the merits has commenced. The new dismissal date may not be later than the original dismissal date established under Section 263.401 or the 180th day after the date the child is moved under this subsection, whichever date is later.

SECTION 5. Section 263.401(d), Family Code, is repealed.

SECTION 6. The changes in law made by this Act to Sections 263.401, 263.402, and 263.403, Family Code, apply only to a suit affecting the parent-child relationship filed on or after the effective date of this Act. A suit affecting the parent-child relationship filed before the effective date of this Act is governed by the law in effect at the time the suit was filed, and the former law is continued in effect for that purpose.

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 Castro moved to adopt the conference committee report on **HB 1481**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1481** prevailed by (Record 1933): 146 Yeas, 2 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; 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; Harless; 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; 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 — Christian; Phillips.

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

HB 2644 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Rose submitted the following conference committee report on **HB 2644**:

Austin, Texas, May 26, 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 2644** 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.

Carona
Deuell
Janek
Ellis
West

Hartnett
S. King
Delisi

On the part of the senate

On the part of the house

HB 2644, A bill to be entitled An Act relating to the licensing and regulation of massage therapists.

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

SECTION 1. Section 455.104(a), Occupations Code, is amended to read as follows:

(a) The department, ~~or~~ its authorized representative, or a peace officer may enter the premises of an applicant for a license or a license holder at:

(1) reasonable times to conduct an inspection incidental to the issuance of a license; and

(2) other times that the department or peace officer considers necessary to ensure compliance with this chapter and the rules adopted under this chapter.

SECTION 2. Section 455.151, Occupations Code, is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

(b) Unless the person is exempt from the licensing requirement, a person may not represent that the person is a massage therapist, massage school, massage therapy instructor, or massage establishment unless the person holds an appropriate ~~a~~ license under this chapter.

(c) A person may not for compensation perform or offer to perform any service with a purported health benefit that involves physical contact with a client unless the person:

(1) holds an appropriate license issued under this chapter; or

(2) is licensed or authorized under other law to perform the service.

(d) The department may issue one or more types of licenses not otherwise provided for by this chapter that authorize the license holder to perform a service described by Subsection (c). The department may adopt rules governing a license issued under this subsection.

SECTION 3. Section 455.155(c), Occupations Code, is amended to read as follows:

- (c) A place of business is not required to hold a license under this chapter if:
- (1) the place of business is owned by the federal government, the state, or a political subdivision of the state;
 - (2) at the place of business, a licensed massage therapist practices as a solo practitioner and:
 - (A) does not use a business name or assumed name; or
 - (B) uses a business name or an assumed name and provides the massage therapist's full legal name or license number in each advertisement and each time the business name or assumed name appears in writing;
 - (3) at the place of business, an acupuncturist, athletic trainer, chiropractor, cosmetologist, midwife, nurse, occupational therapist, perfusionist, physical therapist, physician, physician assistant, podiatrist, respiratory care practitioner, or surgical assistant licensed or certified in this state employs or contracts with a licensed massage therapist to provide massage therapy as part of the person's practice; or
 - (4) at the place of business, a person offers to perform or performs massage therapy:
 - (A) for not more than 72 hours in any six-month period; and
 - (B) as part of a public or charity event, the primary purpose of which is not to provide massage therapy. [The executive commissioner by rule shall provide for a fair and reasonable procedure to grant exemptions from the licensing requirements of this chapter. The rules must provide that a person is exempt if the person shows that the advertising or provision of massage therapy services is incidental to the person's primary enterprise.]

SECTION 4. Section 455.156(b), Occupations Code, is amended to read as follows:

- (b) An applicant for a license under this section must be an individual and:
- (1) present evidence satisfactory to the department that the person[-]
 - (A) ~~has~~ has satisfactorily completed massage therapy studies in a 500-hour minimum ~~[300-hour]~~, supervised course of instruction provided by a massage therapy instructor at a massage school, a licensed massage school, a state-approved educational institution, or any combination of instructors or schools, in which at least:
 - (A) 200 ~~[(i) 125]~~ hours are taught by a licensed massage therapy instructor and dedicated to the study of massage therapy techniques and theory and the practice of manipulation of soft tissue, with at least 125 hours dedicated to the study of Swedish massage therapy techniques ~~[and taught by a massage therapy instructor]~~;
 - (B) ~~[(ii)]~~ 50 hours are dedicated to the study of anatomy;
 - (C) ~~[(iii)]~~ 25 hours are dedicated to the study of physiology;
 - (D) 50 hours are dedicated to the study of kinesiology;
 - (E) 40 hours are dedicated to the study of pathology;
 - (F) 20 ~~[(iv) 15]~~ hours are dedicated to the study of hydrotherapy;

(G) 45 ~~[(v) 15]~~ hours are dedicated to the study of massage therapy laws and rules, business practices, and professional ethics standards;

(H) ~~[(vii)]~~ 20 hours are dedicated to the study of health, ~~[and]~~ hygiene, first aid, universal precautions, and cardiopulmonary resuscitation (CPR); and

(I) ~~[(viii)]~~ 50 hours are spent in an internship program; ~~[or (B) has practiced massage therapy as a profession for not less than five years in another state or country that the department determines does not maintain standards and requirements of practice and licensing or registration that substantially conform to the standards and requirements of this state;]~~

(2) pass the ~~[practical and]~~ written ~~[portions of the]~~ state examination; and

(3) be at least 18 years of age.

SECTION 5. Section 455.351, Occupations Code, is amended by amending Subsections (a) and (e) and adding Subsections (g), (h), and (i) to read as follows:

(a) The attorney general, a district or county attorney, a municipal attorney, or the department may institute an action for injunctive relief to restrain a violation by a person who:

(1) appears to be in violation of or threatening to violate this chapter or a rule adopted under this chapter; or

(2) is the owner or operator of ~~[operating]~~ an establishment that offers massage therapy or other massage services regulated by this chapter and is not licensed under this chapter.

(e) The attorney general, district and county attorney, municipal attorney, and the department may recover reasonable expenses incurred in obtaining injunctive relief or a civil penalty under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

(g) In an injunction issued under this section, a court may include reasonable requirements to prevent further violations of this chapter.

(h) Notwithstanding Section 22.004, Government Code:

(1) a person may not continue the enjoined activity pending appeal or trial on the merits of an injunctive order entered in a suit brought under this subchapter;

(2) not later than the 90th day after the date of the injunctive order, the appropriate court of appeals shall hear and decide an appeal taken by a party enjoined under this subchapter; and

(3) if an appeal is not taken by a party temporarily enjoined under this article, the parties are entitled to a full trial on the merits not later than the 90th day after the date of the temporary injunctive order.

(i) In this section:

(1) "Operator" means a person who is supervising a massage establishment or massage school at the time a violation occurs or the establishment or school is inspected. If no person is supervising, then any employee, contractor, or agent of the owner who is present at the establishment or school is the operator.

(2) "Owner" includes a person:

(A) in whose name a certificate of occupancy has been issued for a massage establishment or massage school and any person having control over that person; or

(B) who operates a massage establishment or massage school under a lease, operating agreement, or other arrangement.

SECTION 6. Section 125.0015(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) A person who maintains a place to which persons habitually go for the following purposes and who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance:

(1) discharge of a firearm in a public place as prohibited by the Penal Code;

(2) reckless discharge of a firearm as prohibited by the Penal Code;

(3) engaging in organized criminal activity as a member of a combination as prohibited by the Penal Code;

(4) delivery, possession, manufacture, or use of a controlled substance in violation of Chapter 481, Health and Safety Code;

(5) gambling, gambling promotion, or communicating gambling information as prohibited by the Penal Code;

(6) prostitution, promotion of prostitution, or aggravated promotion of prostitution as prohibited by the Penal Code;

(7) compelling prostitution as prohibited by the Penal Code;

(8) commercial manufacture, commercial distribution, or commercial exhibition of obscene material as prohibited by the Penal Code;

(9) aggravated assault as described by Section 22.02, Penal Code;

(10) sexual assault as described by Section 22.011, Penal Code;

(11) aggravated sexual assault as described by Section 22.021, Penal Code;

(12) robbery as described by Section 29.02, Penal Code;

(13) aggravated robbery as described by Section 29.03, Penal Code;

(14) unlawfully carrying a weapon as described by Section 46.02, Penal Code;

(15) murder as described by Section 19.02, Penal Code; ~~or~~

(16) capital murder as described by Section 19.03, Penal Code; or

(17) massage therapy or other massage services in violation of Chapter 455, Occupations Code.

SECTION 7. Except as provided by Section 8 of this Act, the changes in law made by this Act to Section 455.156, Occupations Code, apply only to a license applicant who enrolls in a massage therapist training program for the first time on or after the effective date of this Act. An applicant who enrolled in a massage therapist training program for the first time before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 8. The change in law made by this Act by the deletion of former Section 455.156(b)(1)(B), Occupations Code, applies only to an application for a license filed on or after the effective date of this Act. A license application filed before that date is governed by the law in effect at the time the application is filed, and the former law is continued in effect for that purpose.

SECTION 9. The change in law made by this Act to Section 455.351, Occupations Code, regarding a violation of Chapter 455, Occupations Code, or a rule adopted under that chapter, applies only to a violation that occurs on or after the effective date of this Act. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

SECTION 10. This Act takes effect September 1, 2007.

Representative Rose moved to adopt the conference committee report on **HB 2644**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 2644** prevailed by (Record 1934): 143 Yeas, 1 Nays, 3 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycoc; 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; Harless; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; 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; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

Nays — Macias.

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

Absent — Harper-Brown; King, T.; Straus.

STATEMENTS OF VOTE

When Record No. 1934 was taken, I was in the house but away from my desk. I would have voted no.

Harper-Brown

I was shown voting yes on Record No. 1934. I intended to vote no.

Phillips

HB 2819 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Ritter submitted the following conference committee report on **HB 2819**:

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 2819** 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
Estes
Hinojosa
Lucio

Ritter
R. Cook
Herrero
Escobar
Ortiz

On the part of the senate

On the part of the house

HB 2819, A bill to be entitled An Act relating to the management and protection of coastal public land and other coastal resources; providing for administrative penalties.

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

SECTION 1. Sections 33.002, 33.012, 33.063, and 33.102, Natural Resources Code, are amended to read as follows:

Sec. 33.002. PURPOSE. The purpose of this chapter is to implement the policies stated in Section 33.001 ~~[of this code]~~ by delegating to the board, assisted by the appropriate ~~[planning division and other]~~ staff of the land office, certain responsibilities and duties with respect to the management of the surface estate in coastal public land.

Sec. 33.012. LAND OFFICE TO ASSIST BOARD. The appropriate ~~[planning division and other]~~ staff of the land office shall assist the board in the discharge of its responsibilities and duties under this chapter.

Sec. 33.063. FEES. The board may prescribe reasonable filing fees and fees for granting leases, easements, ~~and~~ permits, and other interests in or rights to use coastal public land.

Sec. 33.102. CONTENTS OF APPLICATION. The application to acquire rights in coastal public land shall include any information the board considers necessary to process the application, including information necessary to evaluate the purpose for which the land is to be used [:

~~(1) an adequate legal description of the land in which the rights are sought;~~

~~(2) a statement of the rights sought;~~

~~[(3) a statement of the purpose or purposes for which the land is to be used;~~

~~[(4) a description of the nature and extent of the improvements, if any, which will be made on the land;~~

~~[(5) an estimate of the time within which any improvements to be made will be completed; and~~

~~[(6) any additional information the board considers necessary, including, in the case of any application for approval of construction, modification, repair, or removal of a structure, a description of all plans for any filling, dumping, dredging, or excavating to be done].~~

SECTION 2. Section 33.103(a), Natural Resources Code, is amended to read as follows:

(a) The board may grant the following interests in coastal public land for the indicated purposes:

(1) leases for public purposes;

(2) easements for purposes connected with:

(A) ownership of littoral property; or

(B) the operation of a facility operated by an existing channel and dock corporation that was issued articles of incorporation under Chapters 13 and 14, Title 32, Revised Statutes;

(3) permits authorizing limited continued use of previously unauthorized structures on coastal public land not connected with ownership of littoral property; ~~and~~

(4) channel easements to the holder of any surface or mineral interest in coastal public land for purposes necessary or appropriate to the use of the interests; and

(5) subject to Section 33.001(g), any other interest in coastal public land for any purpose if the board determines that the grant is in the best interest of the state.

SECTION 3. Sections 33.104 and 33.105, Natural Resources Code, are amended to read as follows:

Sec. 33.104. DETERMINATION OF TERMS OF GRANT; CONSUMMATION OF TRANSACTION ~~[PROCESSING APPLICATION]~~. ~~[(a) On receiving an application, the board may circulate it for review and comment to the member agencies of the Interagency Natural Resources Council or its successor.~~

~~[(b) The board shall determine whether the proposed application should be granted not less than 30 days nor more than 90 days after the application is received.~~

~~[(c) If the board approves the application [is granted], the board shall determine the terms [reasonable term], conditions, and consideration for the grant of an interest in or right to use coastal public land and may consummate the transaction.~~

Sec. 33.105. PERSONS TO WHOM INTEREST IN LAND MAY BE GRANTED [~~LEASED~~]. The board may grant to any person an interest in [~~lease~~] coastal public land if the board determines that the grant is in the best interest of the state ~~to:~~

~~(1) the Parks and Wildlife Department or to any eligible city or county for public recreational purposes;~~

~~(2) the Parks and Wildlife Department for management of estuarine preserves;~~

~~(3) any nonprofit, tax exempt environmental organization approved by the board for the purpose of managing a wildlife refuge; and~~

~~(4) any scientific or educational organization or institution for conducting scientific research].~~

SECTION 4. Sections 33.604 and 33.605, Natural Resources Code, are amended to read as follows:

Sec. 33.604. COASTAL EROSION RESPONSE ACCOUNT. (a) The coastal erosion response account is an account in the general revenue fund that may be appropriated only to the commissioner and used only for the purpose of implementing this subchapter and administration of the coastal management program as provided in Subchapter F.

(b) The account consists of:

(1) all money appropriated for the purposes of this subchapter;

(2) grants to this state from the United States for the purposes of this subchapter; ~~and~~

(3) all money received by this state from the sale of dredged material; and

(4) penalties or costs collected under Section 61.0184 or 63.1814.

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

Sec. 33.605. USES OF ACCOUNT. (a) Money in the account may be used for:

(1) any action authorized by this subchapter; and

(2) the administration of the coastal management program as provided in Subchapter F [~~, except for a restoration project authorized by Section 33.613~~].

(b) The commissioner must approve an expenditure from the account. In determining whether to approve an expenditure for a study or project, the commissioner shall consider:

(1) the amount of money in the account;

(2) the feasibility and cost-effectiveness of the study or project;

(3) the locations of other existing or proposed erosion response projects;

(4) the needs in other critical coastal erosion areas;

(5) the effect of the study or project on public or private property; and

(6) if the site to be studied or project to be conducted will be located within the jurisdiction of a local government subject to Chapter 61 or 63:

(A) [~~;~~] whether the local government is adequately administering those chapters; and

(B) the building set-back line established by the local government under Section 33.607.

SECTION 5. The heading to Section 33.607, Natural Resources Code, is amended to read as follows:

Sec. 33.607. COASTAL EROSION PUBLIC AWARENESS AND EDUCATION; LOCAL GOVERNMENT PLANNING AND REGULATION.

SECTION 6. Section 33.607, Natural Resources Code, is amended by amending Subsection (e) and adding Subsections (f), (g), and (h) to read as follows:

(e) A local government subject to Chapter 61 or 63 may ~~is encouraged to~~ use historical erosion data to prepare a plan for reducing public expenditures for erosion and storm damage losses to public and private property, including public beaches, by establishing and implementing a building set-back line that will accommodate a shoreline retreat. The local government shall hold a public educational meeting on the plan before proposing to implement it through the plans, orders, or ordinances provided by Chapters 61 and 63.

(f) A plan for reducing public expenditures for erosion and storm damage losses to public and private property that includes the establishment and implementation of a building set-back line under this section may:

(1) preserve and enhance the public's right of access to and use of the public beach;

(2) preserve critical sand dunes for natural storm protection and conservation purposes;

(3) establish a building set-back line no further landward than the dune protection line established by the local government under Chapter 63;

(4) provide for the prohibition of new construction seaward of the building set-back line; and

(5) provide for the acquisition of fee title to or a lesser interest in property seaward of the building set-back line.

(g) The commissioner may adopt rules for the establishment and implementation of a building set-back line under this section.

(h) Chapter 2007, Government Code, does not apply to a rule or local government order or ordinance authorized by this section.

SECTION 7. Section 33.651(4), Natural Resources Code, is amended to read as follows:

(4) "Coastal improvement project" means a project to improve access to a public beach by:

(A) acquiring fee title to property or a right of public access to a public beach;

(B) constructing or maintaining public roads, parking, or other facilities in aid of public access to or use of a public beach; ~~or~~

(C) requiring a landowner, as prescribed by land office rules, to restore land affected by coastal erosion to its original boundaries; or

(D) implementing a building set-back line established under Section 33.607.

SECTION 8. Section 33.656, Natural Resources Code, is amended to read as follows:

Sec. 33.656. PROJECTS THAT QUALIFY FOR FUNDING. To qualify for funding under this subchapter, a project must:

- (1) be sponsored by a coastal county;
- (2) be located within the sponsoring coastal county along or adjacent to the shore of the Gulf of Mexico, an inland bay, or a connecting channel between the Gulf of Mexico and an inland bay;
- (3) be accessible by public roads or a common carrier ferry;
- (4) be identified and approved for funding by a coastal county and the land office; and
- (5) require more than \$5 million to complete, as estimated by the land office, unless the project implements a building set-back line established under Section 33.607.

SECTION 9. Section 33.659(a), Natural Resources Code, is amended to read as follows:

(a) In addition to all other powers that a coastal county has under general law, a coastal county has the rights, powers, privileges, authority, and functions that are necessary or convenient to:

- (1) the designing, engineering, acquiring, constructing, improving, maintaining, extending, repairing, replacing, monitoring, removing, administering, and financing of a qualified project located in a coastal county; ~~and~~
- (2) the funding of a reserve or other fund relating to bonds; and
- (3) the establishment and implementation of a building set-back line under Section 33.607.

SECTION 10. Section 61.011(d), Natural Resources Code, is amended to read as follows:

(d) The commissioner shall promulgate rules, consistent with the policies established in this section, on the following matters only:

- (1) acquisition by local governments or other appropriate entities or public dedication of access ways sufficient to provide adequate public ingress and egress to and from the beach within the area described in Subdivision (6);
- (2) protection of the public easement from erosion or reduction caused by development or other activities on adjacent land and beach cleanup and maintenance;
- (3) local government prohibitions of vehicular traffic on public beaches, provision of off-beach parking, and other minimum measures needed to mitigate for any adverse effect on public access and dune areas;
- (4) imposition of beach access, user, or parking fees and reasonable exercises of the police power by local governments with respect to public beaches;
- (5) contents and certification of beach access and use plans and standards for local government review of construction on land adjacent to and landward of public beaches, including procedures for expedited review of beach access and use plans under Section 61.015;

(6) construction on land adjacent to and landward of public beaches and lying in the area either up to the first public road generally parallel to the beach or to any closer public road not parallel to the beach, or to within 1,000 feet of mean high tide, whichever is greater, that affects or may affect public access to and use of public beaches; ~~and~~

(7) the temporary suspension under Section 61.0185 of enforcement of the prohibition against encroachments on and interferences with the public beach easement and the ability of a property owner to make repairs to a house while a suspension is in effect;

(8) the determination of the line of vegetation or natural line of vegetation;

(9) the factors to be considered in determining whether a structure, improvement, obstruction, barrier, or hazard on the public beach:

(A) constitutes an imminent hazard to safety, health, or public welfare; or

(B) substantially interferes with the free and unrestricted right of the public to enter or leave the public beach or traverse any part of the public beach; and

(10) the procedures for determining whether a structure is not insurable property for purposes of Section 2210.004, Insurance Code, because of the factors listed in Subsection (h) of that section.

SECTION 11. Sections 61.015(b) and (c), Natural Resources Code, are amended to read as follows:

(b) Local governments shall submit proposed beach access and use plans to the commissioner for certification as to compliance with such policies and rules. The commissioner shall act on a local government's proposed beach access and use plan within 90 ~~60~~ days of submission by either approving the plan or denying certification. In the event of denial, the commissioner shall send the proposed plan back to the originating local government with a statement of specific objections and the reasons for denial, along with suggested modifications. On receipt, the local government shall revise and resubmit the plan. The commissioner's certification of local government plans shall be by adoption into the rules under Section 61.011.

(c) A littoral owner proposing construction adjacent to and landward of a public beach in the area described in Section 61.011(d)(6) shall submit a development plan to the appropriate local government. The local government shall forward a ~~the~~ development plan for small-scale construction activity that includes 5,000 square feet or less or habitable structures two stories or less in height to the commissioner no less than 10 working days prior to acting on the development plan. The local government shall forward a development plan for large-scale construction activity that includes more than 5,000 square feet or habitable structures more than two stories in height to the commissioner no less than 30 working days prior to acting on the development plan. The commissioner may submit comments on the proposed construction to the local government.

SECTION 12. Sections 61.018(b) and (c), Natural Resources Code, are amended to read as follows:

(b) In the same suit, the attorney general, the commissioner, county attorney, district attorney, or criminal district attorney may recover penalties and the costs of removing any improvement, obstruction, barrier, or other encroachment if it is removed by public authorities pursuant to an order of the court or a removal order issued by the commissioner as provided by Section 61.0183.

(c) A person who violates this chapter or a removal order issued by the commissioner as provided by Section 61.0183 is liable for a civil penalty of not less than \$50 nor more than \$2,000 [~~\$1,000~~]. Each day the violation occurs or continues is a separate violation.

SECTION 13. Subchapter B, Chapter 61, Natural Resources Code, is amended by adding Sections 61.0181, 61.0182, 61.0183, and 61.0184 to read as follows:

Sec. 61.0181. ADMINISTRATIVE PENALTY. The commissioner may assess an administrative penalty against a person who violates this chapter or a rule adopted under this chapter in the amount provided by Section 61.018(c) for a civil penalty. In determining the amount of the penalty, the commissioner shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or damage caused thereby;

(2) the degree of cooperation and quality of response;

(3) the degree of culpability and history of previous violations by the person subject to the penalty;

(4) the amount necessary to deter future violations; and

(5) any other matter that justice requires.

Sec. 61.0182. ENFORCEMENT PROVISIONS CUMULATIVE. This subchapter is cumulative of all other applicable penalties, remedies, and enforcement and liability provisions.

Sec. 61.0183. REMOVAL OF CERTAIN STRUCTURES, IMPROVEMENTS, OBSTRUCTIONS, BARRIERS, AND HAZARDS ON PUBLIC BEACH. (a) The commissioner may order the removal of a structure, improvement, obstruction, barrier, or hazard from a public beach if the commissioner finds the structure, improvement, obstruction, barrier, or hazard to be on the public beach as defined by Section 61.013(c) and:

(1) the structure, improvement, obstruction, barrier, or hazard was constructed or placed on the beach in a manner that is inconsistent with the local government's beach access and use plan; or

(2) the structure, improvement, obstruction, or barrier constitutes an imminent hazard to safety, health, or public welfare.

(b) The decision to remove a structure, improvement, obstruction, barrier, or hazard under this section is discretionary with the commissioner. This section does not impose a duty on the state to remove a structure, improvement, obstruction, barrier, or hazard or to remedy or warn of a hazardous condition on the public beach.

(c) The commissioner may contract for the removal and disposal of a structure, improvement, obstruction, barrier, or hazard under this section and may pay the costs of removal from money appropriated by the legislature.

Sec. 61.0184. NOTICE REQUIREMENTS; ORDERS AND HEARINGS.

(a) The commissioner shall make a determination that a structure is located on the public beach, assess an administrative penalty, and pursue the removal of a structure, improvement, obstruction, barrier, or hazard from a public beach in accordance with this section.

(b) Before the commissioner may notify the Texas Windstorm Insurance Association as provided by Section 2210.004, Insurance Code, regarding the status of property, the commissioner must give written notice and an opportunity for a hearing to a person who is constructing, maintains, controls, owns, or possesses the structure, improvement, obstruction, barrier, or hazard on the public beach. The notice must state that:

(1) the commissioner finds that a specific structure is located on the public beach as determined under this chapter, and:

(A) constitutes an imminent hazard to safety, health, or public welfare; or

(B) substantially interferes with the free and unrestricted right of the public to enter or leave the public beach or traverse any part of the public beach;

(2) the commissioner intends to notify the Texas Windstorm Insurance Association of a determination in accordance with Section 2210.004, Insurance Code; and

(3) the person who is constructing, maintains, controls, owns, or possesses the structure, improvement, obstruction, barrier, or hazard located on the public beach may submit, not later than the 30th day after the date on which the notice is served, written request for a hearing to contest the determination.

(c) Before the commissioner may order the removal of a structure, improvement, obstruction, barrier, or hazard under Section 61.0183 or impose an administrative penalty under Section 61.0181, the commissioner must provide written notice to the person who is constructing, maintains, controls, owns, or possesses the structure, improvement, obstruction, barrier, or hazard. The notice must:

(1) describe the specific structure, improvement, obstruction, barrier, or hazard that violates this subchapter;

(2) state that the person who is constructing, maintains, controls, owns, or possesses the structure, improvement, obstruction, barrier, or hazard is required to remove the structure, improvement, obstruction, barrier, or hazard:

(A) not later than the 30th day after the date on which the notice is served, if the structure, improvement, obstruction, barrier, or hazard is obstructing access to or use of the public beach; or

(B) within a reasonable time specified by the commissioner if the structure, improvement, obstruction, barrier, or hazard is an imminent and unreasonable threat to public health, safety, or welfare;

(3) state that failure to remove the structure, improvement, obstruction, barrier, or hazard may result in liability for a civil penalty under Section 61.018(c), removal by the commissioner and liability for the costs of removal, or any combination of those remedies; and

(4) state that the person who is constructing, maintains, controls, owns, or possesses the structure, improvement, obstruction, barrier, or hazard may submit, not later than the 30th day after the date on which the notice is served, written request for a hearing.

(d) A person is considered to be the person who owns, maintains, controls, or possesses an improvement, obstruction, barrier, or other encroachment on the public beach for purposes of this section if the person is the person who most recently owned, maintained, controlled, or possessed the improvement, obstruction, barrier, or other encroachment on the public beach.

(e) The notice required by Subsection (b) must be given:

(1) by service in person, by registered or certified mail, return receipt requested, or by priority mail; or

(2) if personal service cannot be obtained or the address of the person responsible is unknown, by posting a copy of the notice on the structure, improvement, obstruction, barrier, or hazard and by publishing notice in a newspaper with general circulation in the county in which the structure, improvement, obstruction, barrier, or hazard is located at least two times within 10 consecutive days.

(f) The commissioner by rule may adopt procedures for a hearing under this section.

(g) The commissioner must grant a hearing before an administrative law judge employed by the State Office of Administrative Hearings if a hearing is requested. A person who does not request a hearing within 30 days after the date on which the notice is served waives all rights to judicial review of the commissioner's findings or orders and shall immediately remove the structure, improvement, obstruction, barrier, or hazard and pay any penalty assessed. If a hearing is held, the commissioner may issue a final order approving the proposal for decision submitted by the administrative law judge concerning a determination regarding whether a structure is not insurable property for purposes of Section 2210.004, Insurance Code, because of the factors listed in Subsection (h) of that section or concerning removal of the structure, improvement, obstruction, barrier, or hazard and payment of a penalty. The commissioner may change a finding of fact or conclusion of law made by the administrative law judge or may vacate or modify an order issued by the administrative judge in accordance with Section 2001.058, Government Code.

(h) A person may seek judicial review of a final order of the commissioner under this section in a Travis County district court under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code. The trial courts of this state shall give preference to an appeal of a final order of the commissioner under this section in the same manner as provided by Section 23.101(a), Government Code, for an appeal of a final order of the commissioner under Section 51.3021 of this code.

(i) If the person who is constructing, maintains, controls, owns, or possesses the structure, improvement, obstruction, barrier, or hazard does not pay assessed penalties, removal costs, and other assessed fees and expenses on or before the 30th day after the date of entry of a final order assessing the penalties, costs, and expenses, the commissioner may:

(1) sell salvageable parts of the structure, improvement, obstruction, barrier, or hazard to offset those costs;

(2) request that the attorney general institute civil proceedings to collect the penalties, costs of removal, and other fees and expenses remaining unpaid; or

(3) use any combination of the remedies prescribed by this subsection, or other remedies authorized by law, to collect the unpaid penalties, costs of removal, and other fees and expenses assessed because of the structure, improvement, obstruction, barrier, or hazard on the public beach and its removal by the commissioner.

(j) Penalties or costs collected under this section shall be deposited in the coastal erosion response account as established under Section 33.604.

(k) Notwithstanding any other provision of this subchapter, if a structure that is the subject of an order for removal under Section 61.0183 or an administrative penalty under Section 61.0181 has been used as a permanent, temporary, or occasional residential dwelling by at least one person at any time during the year before the date on which the order is issued or the penalty is assessed:

(1) the notice required by Subsection (c) must state that the person who is constructing, maintains, controls, owns, or possesses the structure may submit, not later than the 90th day after the date on which the notice is served, written request for a hearing;

(2) if the person does not request a hearing within 90 days after the date on which the notice is served, the person waives all rights to judicial review of the commissioner's findings or orders and shall immediately remove the structure and pay any penalty assessed; and

(3) the amount of the administrative penalty assessed may not exceed \$1,000 for each day the violation occurs or continues.

SECTION 14. Sections 61.020 and 61.025, Natural Resources Code, are amended to read as follows:

Sec. 61.020. PRIMA FACIE EVIDENCE. (a) In a suit or administrative proceeding brought or defended under this subchapter or whose determination is affected by this subchapter, a showing that the area in question is located in the area from mean low tide to the line of vegetation is prima facie evidence that:

(1) the title of the littoral owner does not include the right to prevent the public from using the area for ingress and egress to the sea; and

(2) there is imposed on the area a common law right or easement in favor of the public for ingress and egress to the sea.

(b) The determination of the location of the line of vegetation by the commissioner as provided by Sections 61.016 and 61.017 constitutes prima facie evidence of the landward boundary of the area subject to the public easement until a court adjudication establishes the line in another place.

Sec. 61.025. DISCLOSURE TO PURCHASER OF PROPERTY. (a) Except as provided by Subsection (b), a [A] person who sells or conveys an interest, other than a mineral, leasehold, or security interest, in real property located seaward of the Gulf Intracoastal Waterway to its southernmost point and then seaward of the longitudinal line also known as 97 degrees, 12', 19" which runs southerly to the international boundary from the intersection of the centerline of the Gulf Intracoastal Waterway and the Brownsville Ship Channel must include in any executory contract for conveyance a [the following] statement in substantially the following form:

C O N C E R N I N G T H E P R O P E R T Y A T

DISCLOSURE NOTICE CONCERNING LEGAL AND ECONOMIC RISKS OF PURCHASING COASTAL REAL PROPERTY NEAR A BEACH
WARNING: THE FOLLOWING NOTICE OF POTENTIAL RISKS OF ECONOMIC LOSS TO YOU AS THE PURCHASER OF COASTAL REAL PROPERTY IS REQUIRED BY STATE LAW.

READ THIS NOTICE CAREFULLY. DO NOT SIGN THIS CONTRACT UNTIL YOU FULLY UNDERSTAND THE RISKS YOU ARE ASSUMING.

BY PURCHASING THIS PROPERTY, YOU MAY BE ASSUMING ECONOMIC RISKS OVER AND ABOVE THE RISKS INVOLVED IN PURCHASING INLAND REAL PROPERTY.

IF YOU OWN A STRUCTURE LOCATED ON COASTAL REAL PROPERTY NEAR A GULF COAST BEACH, IT MAY COME TO BE LOCATED ON THE PUBLIC BEACH BECAUSE OF COASTAL EROSION AND STORM EVENTS.

AS THE OWNER OF A STRUCTURE LOCATED ON THE PUBLIC BEACH, YOU COULD BE SUED BY THE STATE OF TEXAS AND ORDERED TO REMOVE THE STRUCTURE.

THE COSTS OF REMOVING A STRUCTURE FROM THE PUBLIC BEACH AND ANY OTHER ECONOMIC LOSS INCURRED BECAUSE OF A REMOVAL ORDER WOULD BE SOLELY YOUR RESPONSIBILITY.

The real property described in this contract is located seaward of the Gulf Intracoastal Waterway to its southernmost point and then seaward of the longitudinal line also known as 97 degrees, 12', 19" which runs southerly to the international boundary from the intersection of the centerline of the Gulf Intracoastal Waterway and the Brownsville Ship Channel. If the property is in close proximity to a beach fronting the Gulf of Mexico, the purchaser is hereby advised that the public has acquired a right of use or easement to or over the area of any public beach by prescription, dedication, or presumption, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized in law and custom.

The extreme seaward boundary of natural vegetation that spreads continuously inland customarily marks the landward boundary of the public easement. If there is no clearly marked natural vegetation line, the landward boundary of the easement is as provided by Sections 61.016 and 61.017, Natural Resources Code.

Much of the Gulf of Mexico coastline is eroding at rates of more than five feet per year. Erosion rates for all Texas Gulf property subject to the open beaches act are available from the Texas General Land Office.

State law prohibits any obstruction, barrier, restraint, or interference with the use of the public easement, including the placement of structures seaward of the landward boundary of the easement. OWNERS OF STRUCTURES ERECTED SEAWARD OF THE VEGETATION LINE (OR OTHER APPLICABLE EASEMENT BOUNDARY) OR THAT BECAME SEAWARD OF THE VEGETATION LINE AS A RESULT OF [NATURAL] PROCESSES SUCH AS SHORELINE EROSION ARE SUBJECT TO A LAWSUIT BY THE STATE OF TEXAS TO REMOVE THE STRUCTURES.

The purchaser is hereby notified that the purchaser should:

(1) determine the rate of shoreline erosion in the vicinity of the real property; and

(2) seek the advice of an attorney or other qualified person before executing this contract or instrument of conveyance as to the relevance of these statutes and facts to the value of the property the purchaser is hereby purchasing or contracting to purchase.

(b) If the statement is not included in the executory contract for conveyance or there is no executory contract for conveyance, the statement must be delivered to, and receipt thereof acknowledged by, the purchaser not later than 10 calendar days prior to closing the transaction.

(c) Failure to comply with Subsection (a) or (b), as applicable, [~~include the statement in an executory contract for conveyance~~] shall be grounds for the purchaser to terminate the [such] contract or agreement to convey, and upon termination any earnest money shall be returned to the party making the deposit.

(d) A seller commits [~~Failure to provide this statement prior to closing, either in the executory contract for conveyance or in a separate written statement, shall constitute~~] a deceptive act under Section 17.46, Business & Commerce Code, if the seller fails to comply with Subsection (a) or Subsection (b), as applicable.

(e) This section, or the failure of a person to give or receive the notice in the manner required by this section, does not diminish or modify the beach access and use rights of the public acquired through statute or under common law.

SECTION 15. Section 63.002, Natural Resources Code, is amended by adding Subdivision (6) to read as follows:

(6) "Restoration" means the repair or replacement of dunes or dune vegetation.

SECTION 16. Section 63.054(c), Natural Resources Code, is amended to read as follows:

(c) Each county or municipality administering this chapter shall establish procedures and requirements governing the review and approval of dune permits, and these procedures and requirements shall be submitted to the commissioner for certification to determine whether the procedures and requirements are in compliance with rules and policies adopted under Section 63.121. The commissioner shall act on a county or municipality's proposed dune protection plan not later than the 90th day after the date the plan is submitted by approving the plan or denying certification. If certification is denied, the commissioner shall return the proposed plan to the originating local government with a statement of specific objections and the reasons for denial, along with suggested modifications. On receipt, the county or municipality shall revise and resubmit the plan. The commissioner must certify a county or municipality's procedures and requirements under this section in accordance with rules adopted under Section 63.121 [comments].

SECTION 17. Section 63.056(a), Natural Resources Code, is amended to read as follows:

(a) After receiving an application for a permit to perform any of the acts prohibited in Section 63.091 in connection with small-scale construction activity that includes 5,000 square feet or less or habitable structures two stories in height or less [of this code], the commissioner's court or the governing body of the municipality shall notify the commissioner by sending, not less than 10 working days before the date of the public hearing on the application, notice of the hearing and a copy of the application. After receiving an application for a permit to perform any of the acts prohibited in Section 63.091 in connection with large-scale construction activity that includes more than 5,000 square feet or habitable structures more than two stories in height, the commissioner's court or the governing body of the municipality shall notify the commissioner by sending, not less than 30 working days before the date of the public hearing on the application, notice of the hearing and a copy of the application.

SECTION 18. Section 63.121, Natural Resources Code, is amended to read as follows:

Sec. 63.121. IDENTIFICATION OF CRITICAL DUNE AREAS; RULES. (a) The commissioner, in his role as trustee of the public land of this state, shall identify the critical dune areas within 1,000 feet of mean high tide that are essential to the protection of state-owned land, public beaches, and submerged land.

(b) The commissioner shall promulgate rules for:

(1) the identification and protection of critical dune areas; and
(2) the certification of procedures and requirements governing the review and approval of dune permits by a county or municipality.

SECTION 19. Section 63.181(b), Natural Resources Code, is amended to read as follows:

(b) A person who violates this chapter or any rule, permit, or order under this chapter is liable for a civil penalty of not less than \$50 nor more than \$2,000 [~~\$1,000~~]. Each day that a violation occurs or continues constitutes a separate offense. A violation of Section 63.091 is considered to be a continuing violation from the date of the initial unauthorized conduct until the earlier of:

(1) the date on which a proper permit is issued authorizing the conduct;

or

(2) the date on which restoration of dunes or dune vegetation damaged by the violation is completed.

SECTION 20. Subchapter G, Chapter 63, Natural Resources Code, is amended by adding Sections 63.1811, 63.1812, 63.1813, and 63.1814 to read as follows:

Sec. 63.1811. ADMINISTRATIVE PENALTY. The commissioner may assess an administrative penalty for a violation of Section 63.091 or any rule, permit, or order issued under this chapter in the amount established by Section 63.181(b) for a civil penalty. In determining the amount of the penalty, the commissioner shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or damage caused thereby;

(2) the degree of cooperation and quality of response;

(3) the degree of culpability and history of previous violations by the person subject to the penalty;

(4) the amount necessary to deter future violations; and

(5) any other matter that justice requires.

Sec. 63.1812. ENFORCEMENT PROVISIONS CUMULATIVE. This subchapter is cumulative of all other applicable penalties, remedies, and enforcement and liability provisions.

Sec. 63.1813. MITIGATION FOR DAMAGE, DESTRUCTION, OR REMOVAL OF DUNE OR DUNE VEGETATION WITHOUT PERMIT. (a) The commissioner may order restoration for the damage, destruction, or removal of a sand dune or a portion of a sand dune or the killing, destruction, or removal of any vegetation growing on a sand dune seaward of the dune protection line or within a critical dune area in violation of this chapter or any rule, permit, or order issued under this chapter.

(b) The decision to require restoration under this section is discretionary with the commissioner. This section does not impose a duty on the state to order restoration.

(c) The commissioner may contract for the restoration required under this section and may pay the costs of restoration from money appropriated by the legislature.

Sec. 63.1814. NOTICE REQUIREMENTS; ORDERS AND HEARINGS. (a) The commissioner shall assess an administrative penalty and pursue restoration in accordance with this section.

(b) Before the commissioner may order restoration under Section 63.1813 or assess an administrative penalty under Section 63.1811, the commissioner must give written notice to a person who is taking or has taken actions that violate Section 63.091 or any rule, permit, or order issued under this chapter. The notice must state:

(1) the specific conduct that violates Section 63.091 or any rule, permit, or order issued under this chapter;

(2) that the person who is engaged in or has been engaged in the conduct that violates Section 63.091 or any rule, permit, or order issued under this chapter must perform restoration for the damage caused by the violation not later than the 60th day after the date on which the notice is served;

(3) that failure to perform restoration for the damage caused by the violation in accordance with the commissioner's order may result in liability for a civil penalty under Section 63.181(b) in an amount specified, restoration contracted or undertaken by the commissioner and liability for the costs of restoration, or any combination of those remedies; and

(4) that the person who is engaging in or has engaged in conduct that violates Section 63.091 or any rule, permit, or order issued under this chapter may submit, not later than the 60th day after the date on which the notice is served, a written request for a hearing.

(c) A person is considered to be engaging in or to have engaged in conduct that violates Section 63.091 or any rule, permit, or order issued under this chapter for purposes of this section if the person is the person who most recently owned, maintained, controlled, or possessed the real property on which the conduct occurred.

(d) The notice required by Subsection (b) must be given:

(1) by service in person, by registered or certified mail, return receipt requested, or by priority mail; or

(2) if personal service cannot be obtained or the address of the person responsible is unknown, by posting a copy of the written notice at the site where the conduct was engaged in and by publishing notice in a newspaper with general circulation in the county in which the site is located at least two times within 10 consecutive days.

(e) The commissioner by rule may adopt procedures for a hearing under this section.

(f) The commissioner must grant a hearing before an administrative law judge employed by the State Office of Administrative Hearings if a hearing is requested. A person who does not request a hearing within 60 days after the date on which the notice is served waives all rights to judicial review of the commissioner's findings or orders and shall immediately initiate mitigation and pay any penalty assessed. If a hearing is held, the commissioner may issue a final order approving the proposal for decision submitted by the administrative law judge concerning mitigation and payment of a penalty. The commissioner may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative law judge in accordance with Section 2001.058, Government Code.

(g) A person may seek judicial review of a final order of the commissioner under this section in a Travis County district court under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code. The trial courts of this state shall give preference to an appeal of a final order of the commissioner under this section in the same manner as provided by Section 23.101(a), Government Code, for an appeal of a final order of the commissioner under Section 51.3021 of this code.

(h) If the person who is engaged in or has been engaged in conduct that violated Section 63.091 or any rule, permit, or order issued under this chapter does not pay assessed penalties, mitigation costs, and other assessed fees and expenses on or before the 60th day after the date of entry of a final order assessing the penalties, costs, and expenses, the commissioner may:

(1) request that the attorney general institute civil proceedings to collect the penalties, costs of restoration, and other fees and expenses remaining unpaid;

or

(2) use any combination of the remedies prescribed by this section, or other remedies authorized by law, to collect the unpaid penalties, costs of restoration, and other fees and expenses assessed because of unauthorized conduct and its mitigation by the commissioner.

(i) Penalties or costs collected under this section shall be deposited in the coastal erosion response account established under Section 33.604.

SECTION 21. Section 2210.004, Insurance Code, is amended by amending Subsection (a) and adding Subsection (h) to read as follows:

(a) Except as provided by Subsection (h), for ~~For~~ purposes of this chapter and subject to this section, "insurable property" means immovable property at a fixed location in a catastrophe area or corporeal movable property located in that immovable property, as designated in the plan of operation, that is determined by the association according to the criteria specified in the plan of operation to be in an insurable condition against windstorm and hail or fire and explosion, as appropriate, as determined by normal underwriting standards.

(h) For purposes of this chapter, a structure is not insurable property if the commissioner of the General Land Office notifies the association of a determination that the structure is located on the public beach under procedures established under Section 61.011, Natural Resources Code, and that the structure:

(1) constitutes an imminent hazard to safety, health, or public welfare;

or

(2) substantially interferes with the free and unrestricted right of the public to enter or leave the public beach or traverse any part of the public beach.

SECTION 22. Section 5.008(b), Property Code, is amended to read as follows:

(b) The notice must be executed and must, at a minimum, read substantially similar to the following:

SELLER'S DISCLOSURE NOTICE

C O N C E R N I N G T H E P R O P E R T Y
AT

(Street Address and City)

THIS NOTICE IS A DISCLOSURE OF SELLER'S KNOWLEDGE OF THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED BY SELLER AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PURCHASER MAY WISH TO OBTAIN. IT IS NOT A WARRANTY OF ANY KIND BY SELLER OR SELLER'S AGENTS.

Seller ___ is ___ is not occupying the Property.

If unoccupied, how long since Seller has occupied the Property?

1. The Property has the items checked below:

Write Yes (Y), No (N), or Unknown (U).

- | | | |
|---|--|--|
| <input type="checkbox"/> Range | <input type="checkbox"/> Oven | <input type="checkbox"/> Microwave |
| <input type="checkbox"/> Dishwasher | <input type="checkbox"/> Trash Compactor | <input type="checkbox"/> Disposal |
| <input type="checkbox"/> Washer/Dryer | <input type="checkbox"/> Window | <input type="checkbox"/> Rain Gutters |
| <input type="checkbox"/> Hookups | <input type="checkbox"/> Screens | |
| <input type="checkbox"/> Security System | <input type="checkbox"/> Fire Detection Equipment | <input type="checkbox"/> Intercom System |
| <input type="checkbox"/> TV Antenna | <input type="checkbox"/> Cable TV | <input type="checkbox"/> Satellite Dish |
| <input type="checkbox"/> Ceiling Fan(s) | <input type="checkbox"/> Wiring | <input type="checkbox"/> Exhaust Fan(s) |
| <input type="checkbox"/> Central A/C | <input type="checkbox"/> Attic Fan(s) | <input type="checkbox"/> Wall/Window Air Conditioning |
| <input type="checkbox"/> Plumbing System | <input type="checkbox"/> Central Heating | <input type="checkbox"/> Public Sewer System |
| <input type="checkbox"/> Patio/Decking | <input type="checkbox"/> Septic System | <input type="checkbox"/> Fences |
| <input type="checkbox"/> Pool | <input type="checkbox"/> Outdoor Grill | <input type="checkbox"/> Spa |
| <input type="checkbox"/> Pool Equipment | <input type="checkbox"/> Sauna | <input type="checkbox"/> Hot Tub |
| | <input type="checkbox"/> Pool Heater | <input type="checkbox"/> Automatic Lawn Sprinkler System |
| <input type="checkbox"/> Fireplace(s) & Chimney (Woodburning) | | <input type="checkbox"/> Fireplace(s) & Chimney (Mock) |
| <input type="checkbox"/> Gas Lines (Nat./LP) | | <input type="checkbox"/> Gas Fixtures |
| Garage: <input type="checkbox"/> Attached | <input type="checkbox"/> Not Attached | <input type="checkbox"/> Carport |
| Garage Door Opener(s): | <input type="checkbox"/> Electronic | <input type="checkbox"/> Control(s) |
| Water Heater: | <input type="checkbox"/> Gas | <input type="checkbox"/> Electric |
| Water Supply: <input type="checkbox"/> City | <input type="checkbox"/> Well <input type="checkbox"/> MUD | <input type="checkbox"/> Co-op |
| Roof Type: _____ | | Age: _____ (approx) |

Are you (Seller) aware of any of the above items that are not in working condition, that have known defects, or that are in need of repair? Yes No Unknown.

If yes, then describe. (Attach additional sheets if necessary):

2. Are you (Seller) aware of any known defect/malfunctions in any of the following?

Write Yes (Y) if you are aware, write No (N) if you are not aware.

- Interior Walls
- Exterior Walls
- Roof
- Walls/Fences
- Plumbing/Sewers/Septics
- Ceilings
- Doors
- Foundation/Slab(s)
- Driveways
- Electrical Systems
- Floors
- Windows
- Basement
- Sidewalks
- Lighting Fixtures

Other Structural Components (Describe): _____

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary): _____

3. Are you (Seller) aware of any of the following conditions?

Write Yes (Y) if you are aware, write No (N) if you are not aware.

- Active Termites (includes wood-destroying insects)
- Termite or Wood Rot
- Needing Repair
- Previous Termite Damage
- Previous Termite Treatment
- Previous Flooding
- Improper Drainage
- Water Penetration
- Located in 100-Year Floodplain
- Present Flood Insurance Coverage
- Landfill, Settling, Soil Movement, Fault Lines
- Previous Structural or Roof Repair
- Hazardous or Toxic Waste
- Asbestos Components
- Urea formaldehyde Insulation
- Radon Gas
- Lead Based Paint
- Aluminum Wiring
- Previous Fires
- Unplatted Easements
- Subsurface Structure or Pits

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary): _____

4. Are you (Seller) aware of any item, equipment, or system in or on the property that is in need of repair? Yes (if you are aware) No (if you are not aware).

If yes, explain (attach additional sheets as necessary). _____

5. Are you (Seller) aware of any of the following?

Write Yes (Y) if you aware, write No (N) if you are not aware.

- Room additions, structural modifications, or other alterations or repairs made without necessary permits or not in compliance with building codes in effect at that time.
- Homeowners' Association or maintenance fees or assessments.

- Any "common area" (facilities such as pools, tennis courts, walkways, or other areas) co-owned in undivided interest with others.
- Any notices of violations of deed restrictions of governmental ordinances affecting the condition or use of the Property.
- Any lawsuits directly or indirectly affecting the Property.
- Any condition on the Property which materially affects the physical health or safety of an individual.

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary):

6. If the property is located in a coastal area that is seaward of the Gulf Intracoastal Waterway or within 1,000 feet of the mean high tide bordering the Gulf of Mexico, the property may be subject to the Open Beaches Act or the Dune Protection Act (Chapter 61 or 63, Natural Resources Code, respectively) and a beachfront construction certificate or dune protection permit may be required for repairs or improvements. Contact the local government with ordinance authority over construction adjacent to public beaches for more information.

Date	Signature of Seller
------	---------------------

The undersigned purchaser hereby acknowledges receipt of the foregoing notice.

Date	Signature of Purchaser
------	------------------------

SECTION 23. Not later than January 1, 2008, the commissioner of the General Land Office shall adopt rules required by Sections 61.011 and 63.121, Natural Resources Code, as amended by this Act.

SECTION 24. Sections 33.014, 33.110(b), and 33.613, Natural Resources Code, are repealed.

SECTION 25. This Act takes effect September 1, 2007.

Representative Ritter moved to adopt the conference committee report on **HB 2819**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 2819** prevailed by (Record 1935): 147 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; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; 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; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent — Veasey.

HB 899 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative W. Smith submitted the following conference committee report on **HB 899**:

Austin, Texas, May 26, 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 899** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Deuell
Hinojosa
Nichols
Van de Putte

W. Smith
Callegari
Escobar
Macias
West

On the part of the senate

On the part of the house

HB 899, A bill to be entitled An Act relating to the operation and functions of the Texas Board of Professional Engineers and the regulation of the practice of engineering.

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

SECTION 1. Section 1001.107, Occupations Code, is amended to read as follows:

Sec. 1001.107. PER DIEM[; REIMBURSEMENT]. [(a)] A board member is entitled to receive a per diem as set by the General Appropriations Act for each day that the member engages in the business of the board.

~~[(b) A board member may not receive reimbursement for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to reimbursement for transportation expenses as provided by the General Appropriations Act.]~~

SECTION 2. Section 1001.108, Occupations Code, is amended to read as follows:

Sec. 1001.108. OFFICERS. The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the will of the governor. The board shall elect annually from its members an assistant presiding officer, a treasurer, and a secretary.

SECTION 3. Section 1001.206(c), Occupations Code, is amended to read as follows:

(c) The fee increase imposed by Subsection (a) does not apply to an engineer who:

(1) meets the qualifications for an exemption under Section 1001.057 or 1001.058 but does not claim that exemption;

(2) is disabled as described by Section 1001.205; ~~or~~

(3) is on inactive status as provided by Section 1001.355; or

(4) is 65 years of age or older.

SECTION 4. Section 1001.306, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) Examination results reported under this section must include a numerical score and an indication of whether the person passed or failed the examination.

SECTION 5. Section 1001.355(a), Occupations Code, is amended to read as follows:

(a) An engineer may request inactive status at any time ~~[before the expiration date of the person's license]~~. A license holder on inactive status may not practice engineering.

SECTION 6. Section 1001.401, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) A license holder is not required to use a seal under this section for a project for which the license holder is not required to hold a license under an exemption provided by Subchapter B.

SECTION 7. Section 1001.4527(a), Occupations Code, is amended to read as follows:

(a) A board member who participated in the investigation of a complaint or in informal settlement negotiations regarding the complaint:

(1) may not ~~[participate in the discussion of or]~~ vote on the matter at a board meeting related to the complaint; and

(2) shall state at the meeting why the member is prohibited from ~~[participating in the discussion of or]~~ voting on the matter.

SECTION 8. Section 1001.109, Occupations Code, is repealed.

SECTION 9. The change in law made by this Act to Section 1001.206(c), Occupations Code, applies only to an application for a license, the renewal of a license, or a reciprocal license filed on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect on the date the application is filed, and the former law is continued in effect for that purpose.

SECTION 10. This Act takes effect September 1, 2007.

Representative W. Smith moved to adopt the conference committee report on **HB 899**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 899** prevailed by (Record 1936): 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; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; 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; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; 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; Zedler; Zerwas.

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

Absent — Giddings; Keffer; Morrison; Woolley.

STATEMENT OF VOTE

When Record No. 1936 was taken, my vote failed to register. I would have voted yes.

Giddings

HB 1638 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Taylor submitted the following conference committee report on **HB 1638**:

Austin, Texas, May 26, 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 1638** 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
Janek

Taylor
Macias

Brimer	Eiland
Hegar	Martinez
Williams	Murphy
On the part of the senate	On the part of the house

HB 1638, A bill to be entitled An Act relating to enforcement of commercial motor vehicle safety standards in certain municipalities.

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

SECTION 1. Section 644.101(b), Transportation Code, is amended to read as follows:

(b) A police officer of any of the following municipalities is eligible to apply for certification under this section:

- (1) a municipality with a population of 100,000 or more;
- (2) a municipality with a population of 25,000 or more any part of which is located in a county with a population of two million or more;
- (3) a municipality with a population of less than 25,000:

(A) any part of which is located in a county with a population of 2.4 million; and

(B) that contains or is adjacent to an international port; ~~(C)~~

(4) a municipality any part of which is located in a county bordering the United Mexican States; or

(5) a municipality with a population of less than 5,000 that is located:

(A) adjacent to a bay connected to the Gulf of Mexico; and

(B) in a county adjacent to a county with a population greater than 3.3 million.

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

Representative Taylor moved to adopt the conference committee report on **HB 1638**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1638** prevailed by (Record 1937): 147 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; Harless; 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; Vo; West; Woolley; Zedler; Zerwas.

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

Absent — Villarreal.

HB 2823 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Bohac submitted the following conference committee report on **HB 2823**:

Austin, Texas, May 26, 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 2823** 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.

Patrick	Bohac
Brimer	Anchia
Carona	Berman
Jackson	Farias
Uresti	C. Howard
On the part of the senate	On the part of the house

HB 2823, A bill to be entitled An Act relating to provisional voting by a person who applied for an early voting ballot by mail.

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

SECTION 1. Section 63.011, Election Code, is amended by adding Subsection (a-1) and amending Subsection (b) to read as follows:

(a-1) A person to whom the early voting clerk was required to provide an early voting ballot by mail under Section 86.001 and who did not vote early by mail may cast a provisional ballot on election day if the person executes an affidavit stating that the person:

(1) is a registered voter in the precinct in which the person seeks to vote; and

(2) did not vote early by mail.

(b) A form for an affidavit required by this section ~~[the affidavit]~~ shall be printed on an envelope in which the provisional ballot voted by the person may be placed and must include a space for entering the identification number of the provisional ballot voted by the person. The affidavit form may include space for disclosure of any necessary information to enable the person to register to vote under Chapter 13. The secretary of state shall prescribe the form of the affidavit under this section.

SECTION 2. Section 65.054(b), Election Code, is amended to read as follows:

(b) A provisional ballot may be accepted only if the board determines that, from the information in the affidavit or contained in public records, the person is eligible to vote in the election and has not previously voted in that election.

SECTION 3. The changes in law made by this Act apply only to an election ordered on or after September 1, 2007.

SECTION 4. This Act takes effect September 1, 2007.

Representative Bohac moved to adopt the conference committee report on **HB 2823**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 2823** prevailed by (Record 1938): 146 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; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; 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; 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 — Merritt; Miles.

HB 1623 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Phillips submitted the following conference committee report on **HB 1623**:

Austin, Texas, May 26, 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 1623** 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.

Carona	Phillips
Ellis	Deshotel
Wentworth	Gattis
Williams	Harper-Brown
	Macias

On the part of the senate

On the part of the house

HB 1623, A bill to be entitled An Act relating to certain offenses, fees, and penalties imposed for operating a motor vehicle or vessel in violation of law and to the use of the money collected.

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

SECTION 1. Section 502.404, Transportation Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) A court may dismiss a charge brought under Subsection (a) if the defendant:

(1) remedies the defect before the defendant's first court appearance;

and

(2) pays an administrative fee not to exceed \$10.

(g) A court may dismiss a charge brought under Subsection (b) if the defendant:

(1) shows that:

(A) the passenger car or commercial motor vehicle was issued a registration insignia by the department that establishes that the vehicle was registered for the period during which the offense was committed; and

(B) the registration insignia described in Paragraph (A) was attached to the passenger car or commercial motor vehicle before the defendant's first court appearance; and

(2) pays an administrative fee not to exceed \$10.

SECTION 2. Section 502.407(b), Transportation Code, is amended to read as follows:

(b) A justice of the peace or municipal court judge having jurisdiction of the offense may:

(1) dismiss a charge of driving with an expired motor vehicle registration if the defendant:

(A) remedies the defect not later than the 20th ~~10th~~ working day after the date of the offense or before the defendant's first court appearance date, whichever is later; and

(B) establishes that the fee prescribed by Section 502.176 has been paid; and

(2) assess an administrative fee not to exceed \$20 ~~[\$10]~~ when the charge is dismissed.

SECTION 3. Section 502.409, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) A court may dismiss a charge brought under Subsection (a)(3), (5), (6), or (7) if the defendant:

(1) remedies the defect before the defendant's first court appearance; and

(2) pays an administrative fee not to exceed \$10.

SECTION 4. Section 521.025, Transportation Code, is amended by adding Subsection (f) to read as follows:

(f) The court may assess a defendant an administrative fee not to exceed \$10 if a charge under this section is dismissed because of the defense listed under Subsection (d).

SECTION 5. Section 521.026, Transportation Code, is amended to read as follows:

Sec. 521.026. DISMISSAL OF EXPIRED LICENSE CHARGE. (a) A judge may dismiss a charge of driving with an expired license if the defendant remedies this defect within 20 ~~[+0]~~ working days or before the defendant's first court appearance date, whichever is later.

(b) The judge may assess the defendant an administrative fee not to exceed \$20 ~~[\$10]~~ when the charge of driving with an expired driver's license is dismissed under Subsection (a).

SECTION 6. Section 521.054, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d) A court may dismiss a charge for a violation of this section if the defendant remedies the defect not later than the 20th working day after the date of the offense and pays an administrative fee not to exceed \$20. The court may waive the administrative fee if the waiver is in the interest of justice.

SECTION 7. Section 521.221, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d) A court may dismiss a charge for a violation of this section if:

(1) the restriction or endorsement was imposed:

(A) because of a physical condition that was surgically or otherwise medically corrected before the date of the offense; or

(B) in error and that fact is established by the defendant;

(2) the department removes the restriction or endorsement before the defendant's first court appearance; and

(3) the defendant pays an administrative fee not to exceed \$10.

SECTION 8. Section 521.457, Transportation Code, is amended by amending Subsections (e) and (f) and adding Subsection (f-1) to read as follows:

(e) Except as provided by Subsections [Subsection] (f) and (f-1), an offense under this section is a Class C misdemeanor [punishable by:

(1) a fine of not less than \$100 or more than \$500; and

(2) confinement in county jail for a term of not less than 72 hours or more than six months].

(f) If it is shown on the trial of an offense under this section that the person has previously been convicted of an offense under this section or an offense under Section 601.371(a), as that law existed before September 1, 2003, the offense is a Class B [A] misdemeanor.

(f-1) If it is shown on the trial of an offense under this section that the license of the person has previously been suspended as the result of an offense involving the operation of a motor vehicle while intoxicated, the offense is a Class B misdemeanor.

SECTION 9. Subchapter D, Chapter 542, Transportation Code, is amended by adding Sections 542.405 and 542.406 to read as follows:

Sec. 542.405. AMOUNT OF CIVIL PENALTY; LATE PAYMENT PENALTY. If a local authority enacts an ordinance to enforce compliance with the instructions of a traffic-control signal by the imposition of a civil or administrative penalty, the amount of:

(1) the civil or administrative penalty may not exceed \$75; and

(2) a late payment penalty may not exceed \$25.

Sec. 542.406. DEPOSIT OF REVENUE FROM CERTAIN TRAFFIC PENALTIES. (a) In this section, "photographic traffic signal enforcement system" means a system that:

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

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

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

(b) This section applies only to a civil or administrative penalty imposed on the owner of a motor vehicle by a local authority that operates or contracts for the operation of a photographic traffic signal enforcement system with respect to a highway under its jurisdiction or that operates or contracts for the operation of any other type of electronic traffic law enforcement system consisting of a camera system that automatically produces one or more recorded photographs or digital images of the license plate on a motor vehicle or the operator of a motor vehicle.

(c) Not later than the 60th day after the end of a local authority's fiscal year, after deducting amounts the local authority is authorized by Subsection (d) to retain, the local authority shall:

(1) send 50 percent of the revenue derived from civil or administrative penalties collected by the local authority under this section to the comptroller for deposit to the credit of the regional trauma account established under Section 782.002, Health and Safety Code; and

(2) deposit the remainder of the revenue in a special account in the local authority's treasury that may be used only to fund traffic safety programs, including pedestrian safety programs, public safety programs, intersection improvements, and traffic enforcement.

(d) A local authority may retain an amount necessary to cover the costs of:

(1) purchasing or leasing equipment that is part of or used in connection with the photographic traffic signal enforcement system in the local authority;

(2) installing the photographic traffic signal enforcement system at sites in the local authority, including the costs of installing cameras, flashes, computer equipment, loop sensors, detectors, utility lines, data lines, poles and mounts, networking equipment, and associated labor costs;

(3) operating the photographic traffic signal enforcement system in the local authority, including the costs of creating, distributing, and delivering violation notices, review of violations conducted by employees of the local authority, the processing of fine payments and collections, and the costs associated with administrative adjudications and appeals; and

(4) maintaining the general upkeep and functioning of the photographic traffic signal enforcement system.

(e) Chapter 133, Local Government Code, applies to fee revenue described by Subsection (c)(1).

(f) If under Section 133.059, Local Government Code, the comptroller conducts an audit of a local authority and determines that the local authority retained more than the amounts authorized by this section or failed to deposit amounts as required by this section, the comptroller may impose a penalty on the local authority equal to twice the amount the local authority:

(1) retained in excess of the amount authorized by this section; or

(2) failed to deposit as required by this section.

SECTION 10. Section 547.004, Transportation Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) A court may dismiss a charge brought under this section if the defendant:

(1) remedies the defect before the defendant's first court appearance;

and

(2) pays an administrative fee not to exceed \$10.

(d) Subsection (c) does not apply to an offense involving a commercial motor vehicle.

SECTION 11. Section 548.605(b), Transportation Code, is amended to read as follows:

(b) The court shall:

(1) dismiss a charge of driving with an expired inspection certificate if:

(A) the defendant remedies the defect within 20 ~~40~~ working days or before the defendant's first court appearance date, whichever is later; and

(B) the inspection certificate has not been expired for more than 60 days; and

(2) assess an administrative fee not to exceed \$20 ~~[\$10]~~ when the charge of driving with an expired inspection certificate has been remedied.

SECTION 12. Section 31.127, Parks and Wildlife Code, is amended by amending Subsection (c) and adding Subsection (f) to read as follows:

(c) Except as provided by Subsection (f), a ~~[-A]~~ person who operates a vessel in violation of Section 31.021(b) or 31.095 commits an offense punishable by a fine of not less than \$100 or more than \$500.

(f) A court may dismiss a charge of operating a vessel with an expired certificate of number under Section 31.021 if:

(1) the defendant remedies the defect not later than the 10th working day after the date of the offense and pays an administrative fee not to exceed \$10; and

(2) the certificate of number has not been expired for more than 60 days.

SECTION 13. Section 133.004, Local Government Code, is amended to read as follows:

Sec. 133.004. CIVIL FEES. This chapter applies to the following civil fees:

(1) the consolidated fee on filing in district court imposed under Section 133.151;

(2) the filing fee in district court for basic civil legal services for indigents imposed under Section 133.152;

(3) the filing fee in courts other than district court for basic civil legal services for indigents imposed under Section 133.153;

(4) the filing fees for the judicial fund imposed in certain statutory county courts under Section 51.702, Government Code;

(5) the filing fees for the judicial fund imposed in certain county courts under Section 51.703, Government Code;

(6) the filing fees for the judicial fund imposed in certain statutory probate courts under Section 51.704, Government Code;

(7) fees collected under Section 118.015;

(8) marriage license fees for the family trust fund collected under Section 118.018;

(9) marriage license or declaration of informal marriage fees for the child abuse and neglect prevention trust fund account collected under Section 118.022; ~~and~~

(10) the filing fee for the judicial fund imposed in district court, statutory county court, and county court under Section 133.154; and

(11) the portion of the civil or administrative penalty described by Section 542.406(c)(1), Transportation Code, imposed by a local authority to enforce compliance with the instructions of a traffic-control signal.

SECTION 14. Subtitle B, Title 9, Health and Safety Code, is amended by adding Chapter 782 to read as follows:

CHAPTER 782. REGIONAL EMERGENCY MEDICAL SERVICES

Sec. 782.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Commissioner" means the executive commissioner of the Health and Human Services Commission.

Sec. 782.002. REGIONAL TRAUMA ACCOUNT. (a) The regional trauma account is created as a dedicated account in the general revenue fund of the state treasury. Money in the account may be appropriated only to the commission to make distributions as provided by Section 782.003.

(b) The account is composed of money deposited to the credit of the account under Section 542.406, Transportation Code, and the earnings of the account.

(c) Sections 403.095 and 404.071, Government Code, do not apply to the account.

Sec. 782.003. PAYMENTS FROM THE REGIONAL TRAUMA ACCOUNT. (a) The commissioner shall use money appropriated from the regional trauma account established under Section 782.002 to fund uncompensated care of designated trauma facilities and county and regional emergency medical services located in the area served by the trauma service area regional advisory council that serves the local authority submitting money under Section 542.406, Transportation Code.

(b) In any fiscal year, the commissioner shall use:

(1) 96 percent of the money appropriated from the account to fund a portion of the uncompensated trauma care provided at facilities designated as state trauma facilities by the Department of State Health Services;

(2) two percent of the money appropriated from the account for county and regional emergency medical services;

(3) one percent of the money appropriated from the account for distribution to the 22 trauma service area regional advisory councils; and

(4) one percent of the money appropriated from the account to fund administrative costs of the commission.

(c) The money under Subsection (b) shall be distributed in proportion to the amount deposited to the account from the local authority.

SECTION 15. Section 542.406, Transportation Code, as added by this Act, and Section 782.002, Health and Safety Code, as added by this Act, apply to revenue received by a local authority unit of this state from the imposition of a civil or administrative penalty on or after the effective date of this Act, regardless of whether the penalty was imposed before, on, or after the effective date of this Act.

SECTION 16. Not later than December 1, 2007, the executive commissioner of the Health and Human Services Commission shall adopt rules to implement Chapter 782, Health and Safety Code, as added by this Act.

SECTION 17. (a) The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. For the purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 18. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2007.

(b) Sections 9, 13, 14, 15, and 16 of this Act take effect only if **SB 1119**, Acts of the 80th Legislature, Regular Session, 2007, is enacted and becomes law.

HB 1623 - POINT OF ORDER

Representative Hill raised a point of order against further consideration of **HB 1623** under Rule 8, Section 3 of the House Rules and Article III, Section 35 of the Texas Constitution on the grounds that the conference committee report violates the one subject rule.

The chair overruled the point of order.

Representative Phillips moved to adopt the conference committee report on **HB 1623**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1623** prevailed by (Record 1939): 135 Yeas, 7 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anderson; Aycock; Bailey; 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; 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; Harless; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Mallory Caraway; Martinez; Martinez Fischer; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Phillips; Pickett; Pitts; 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.

Nays — Anchia; Harper-Brown; Hochberg; Jackson; Madden; McCall; Pierson.

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

Absent — Bonnen; Deshotel; Hill; Peña; Puente; Thompson.

HB 1864 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Gonzales submitted the following conference committee report on **HB 1864**:

Austin, Texas, May 26, 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 1864** 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
Carona
Harris
Watson

Gonzales
Corte
Van Arsdale
Vaught

On the part of the senate

On the part of the house

HB 1864, A bill to be entitled An Act relating to periods of possession of and access to a child, including periods of electronic communication.

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

SECTION 1. Subchapter A, Chapter 153, Family Code, is amended by adding Section 153.015 to read as follows:

Sec. 153.015. ELECTRONIC COMMUNICATION WITH CHILD BY CONSERVATOR. (a) In this section, "electronic communication" means any communication facilitated by the use of any wired or wireless technology via the Internet or any other electronic media. The term includes communication facilitated by the use of a telephone, electronic mail, instant messaging, videoconferencing, or webcam.

(b) If a conservator of a child requests the court to order periods of electronic communication with the child under this section, the court may award the conservator reasonable periods of electronic communication with the child to supplement the conservator's periods of possession of the child. In determining whether to award electronic communication, the court shall consider:

(1) whether electronic communication is in the best interest of the child;

(2) whether equipment necessary to facilitate the electronic communication is reasonably available to all parties subject to the order; and

(3) any other factor the court considers appropriate.

(c) If a court awards a conservator periods of electronic communication with a child under this section, each conservator subject to the court's order shall:

(1) provide the other conservator with the e-mail address and other electronic communication access information of the child;

(2) notify the other conservator of any change in the e-mail address or other electronic communication access information not later than 24 hours after the date the change takes effect; and

(3) if necessary equipment is reasonably available, accommodate electronic communication with the child, with the same privacy, respect, and dignity accorded all other forms of access, at a reasonable time and for a reasonable duration subject to any limitation provided by the court in the court's order.

(d) The court may not consider the availability of electronic communication as a factor in determining child support. The availability of electronic communication is not intended as a substitute for physical possession of or access to the child, where otherwise appropriate.

(e) In a suit in which the court's order contains provisions related to a finding of family violence in the suit, including supervised visitation, the court may award periods of electronic communication under this section only if:

(1) the award and terms of the award are mutually agreed to by the parties; and

(2) the terms of the award:

(A) are printed in the court's order in boldfaced, capitalized type;

and

(B) include any specific restrictions relating to family violence or supervised visitation, as applicable, required by other law to be included in a possession or access order.

SECTION 2. Section 153.312(a), Family Code, is amended to read as follows:

(a) If the possessory conservator resides 100 miles or less from the primary residence of the child, the possessory conservator shall have the right to possession of the child as follows:

(1) on weekends throughout the year beginning at 6 p.m. on the first, third, and fifth Friday of each month and ending at 6 p.m. on the following Sunday except that ~~[or]~~, at the possessory conservator's election made before or at the time of the rendition of the original or modification order, and as specified in the original or modification order, the weekend periods of possession specified by this subdivision that occur during the regular school term shall begin ~~[beginning]~~ at the time the child's school is regularly dismissed and end ~~[ending]~~ at 6 p.m. on the following Sunday; and

(2) on Thursdays of each week during the regular school term beginning at 6 p.m. and ending at 8 p.m., or, at the possessory conservator's election made before or at the time of the rendition of the original or modification order, and as specified in the original or modification order, beginning at the time the child's school is regularly dismissed and ending at the time the child's school resumes, unless the court finds that visitation under this subdivision is not in the best interest of the child.

SECTION 3. Section 153.314, Family Code, is amended to read as follows:

Sec. 153.314. HOLIDAY POSSESSION UNAFFECTED BY DISTANCE PARENTS RESIDE APART. The following provisions govern possession of the child for certain specific holidays and supersede conflicting weekend or Thursday periods of possession without regard to the distance the parents reside apart. The possessory conservator and the managing conservator shall have rights of possession of the child as follows:

(1) the possessory conservator shall have possession of the child in even-numbered years beginning at 6 p.m. on the day the child is dismissed from school for the Christmas school vacation and ending at noon on December 28 ~~[26]~~, and the managing conservator shall have possession for the same period in odd-numbered years;

(2) the possessory conservator shall have possession of the child in odd-numbered years beginning at noon on December 28 ~~[26]~~ and ending at 6 p.m. on the day before school resumes after that vacation, and the managing conservator shall have possession for the same period in even-numbered years;

(3) the possessory conservator shall have possession of the child in odd-numbered years, beginning at 6 p.m. on the day the child is dismissed from school before Thanksgiving and ending at 6 p.m. on the following Sunday, and the managing conservator shall have possession for the same period in even-numbered years;

(4) the parent not otherwise entitled under this standard order to present possession of a child on the child's birthday shall have possession of the child beginning at 6 p.m. and ending at 8 p.m. on that day, provided that the parent picks up the child from the residence of the conservator entitled to possession and returns the child to that same place;

(5) if a conservator, the father shall have possession of the child beginning at 6 p.m. on the Friday preceding Father's Day and ending on Father's Day at 6 p.m., provided that, if he is not otherwise entitled under this standard order to present possession of the child, he picks up the child from the residence of the conservator entitled to possession and returns the child to that same place; and

(6) if a conservator, the mother shall have possession of the child beginning at 6 p.m. on the Friday preceding Mother's Day and ending on Mother's Day at 6 p.m., provided that, if she is not otherwise entitled under this standard order to present possession of the child, she picks up the child from the residence of the conservator entitled to possession and returns the child to that same place.

SECTION 4. Section 153.3161, Family Code, is amended to read as follows:

Sec. 153.3161. ~~[LIMITED]~~ POSSESSION DURING MILITARY DEPLOYMENT. (a) In this section, "military deployment" means military duty ordered for a period of more than six months during which the person ordered to duty:

(1) is not provided the option of being accompanied by the person's child; and

(2) is serving in a location where access to the person's child is not reasonably possible.

(b) In addition to the general terms and conditions of possession required by Section 153.316, if a possessory conservator or a joint managing conservator of the child without the exclusive right to designate the primary residence of the child is currently a member of the armed forces of the state or the United States or is reasonably expected to join those forces, the court shall:

(1) permit that conservator to designate a person who may exercise ~~[limited]~~ possession of the child on behalf of that conservator during any period that the conservator is deployed under a military deployment ~~[outside of the United States]~~; and

(2) if the conservator elects to designate a person under Subdivision (1), provide in the order for ~~[limited]~~ possession of the child by the designated person under those circumstances, subject to the court's determination that the ~~[limited]~~ possession is in the best interest of the child.

(c) ~~[(b)]~~ If the court determines that the ~~[limited]~~ possession is in the best interest of the child, the court shall provide in the order that during periods of military deployment:

(1) the designated person has the right to possession of the child for the periods and in the manner in which the deployed conservator would be entitled to exercise possession if not deployed ~~[on the first weekend of each month beginning at 6 p.m. on Friday and ending at 6 p.m. on Sunday];~~

(2) ~~[the other parent shall surrender the child to the designated person at the beginning of each period of possession at the other parent's residence;~~

~~[(3) the designated person shall return the child to the other parent's residence at the end of each period of possession;~~

~~[(4)]~~ the child's other parent and the designated person are subject to the requirements of Section 153.316, with the designated person considered for purposes of that section to be the possessory conservator ~~[Sections 153.316(5)-(9)];~~

(3) ~~[(5)]~~ the designated person has the rights and duties of a nonparent possessory conservator under Section 153.376(a) during the period that the person has possession of the child; and

(4) ~~[(6)]~~ the designated person is subject to any provision in a court order restricting or prohibiting access to the child by any specified individual.

(d) ~~[(e)]~~ After the military deployment is concluded, and the deployed parent returns to that parent's usual residence, the designated person's right to ~~[limited]~~ possession under this section terminates and the rights of all affected parties are governed by the terms of any court order applicable when a parent is not deployed.

SECTION 5. Section 156.105, Family Code, is amended to read as follows:

Sec. 156.105. MODIFICATION OF ORDER BASED ON MILITARY DEPLOYMENT. (a) In this section, "military deployment" means military duty ordered for a period of more than six months during which the person ordered to duty:

(1) is not provided the option of being accompanied by the person's child; and

(2) is serving in a location where access to the person's child is not reasonably possible.

(b) The military deployment ~~[outside this country]~~ of a person who is a possessory conservator or a joint managing conservator without the exclusive right to designate the primary residence of the child is a material and substantial change of circumstances sufficient to justify a modification of an existing court order or portion of a decree that sets the terms and conditions for the possession of or access to a child.

(c) ~~(b)~~ If the court determines that modification is in the best interest of the child, the court may modify the order or decree to provide in a manner consistent with Section 153.3161 for ~~limited~~ possession of the child during the period of the military deployment by a person designated by the deployed conservator.

SECTION 6. Section 153.015, Family Code, as added by this Act, applies to a suit affecting the parent-child relationship filed before, on, or after the effective date of this Act.

SECTION 7. The change in law made by this Act to Section 153.314, Family Code, applies only to a court order providing for possession of or access to a child rendered on or after the effective date of this Act. A court order rendered before the effective date of this Act is governed by the law in effect on the date the order was rendered, and the former law is continued in effect for that purpose.

SECTION 8. Section 153.3161, Family Code, as amended by this Act, applies only to a suit affecting the parent-child relationship pending in a trial court on or filed on or after the effective date of this Act.

SECTION 9. Section 156.105, Family Code, as amended by this Act, applies only to an action to modify an order in a suit affecting the parent-child relationship pending in a trial court on or filed on or after the effective date of this Act.

SECTION 10. 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 Gonzales moved to adopt the conference committee report on **HB 1864**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1864** prevailed by (Record 1940): 146 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; 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; Harless; 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; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent — Bonnen; Talton.

HB 3385 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Chisum submitted the following conference committee report on **HB 3385**:

Austin, Texas, May 26, 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 3385** 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
Averitt
Estes
Fraser
Watson

Chisum
Keffer
Swinford
D. Howard

On the part of the senate

On the part of the house

HB 3385, A bill to be entitled An Act relating to the use of certain state money for costs related to the relocation to the city of Austin, Texas, of the Interstate Oil and Gas Compact Commission and for the support of that commission.

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

SECTION 1. Section 40.152, Natural Resources Code, is amended by adding Subsection (d) to read as follows:

(d) Notwithstanding Section 40.151 and Subsection (a) of this section, if the Interstate Oil and Gas Compact Commission relocates to the city of Austin, Texas, on or before December 31, 2008, money in the fund may be disbursed to pay for costs related to the relocation and for the support of that commission. The amount of money in the fund that may be disbursed under this subsection in a state fiscal year may not exceed \$500,000. Sections 40.153 and 40.161 do not apply to money disbursed under this subsection. This subsection expires August 31, 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 Chisum moved to adopt the conference committee report on **HB 3385**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 3385** prevailed by (Record 1941): 144 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alonzo; Anchia; Anderson; Aycock; Bailey; 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; Harless; 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; 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; Zerwas.

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

Absent — Allen; Bonnen; Pickett; Zedler.

HB 3613 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Latham submitted the following conference committee report on **HB 3613**:

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 3613** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Deuell
Eltife
Seliger
Hinojosa

Driver
Ortiz
O'Day
Vo
Latham

On the part of the senate

On the part of the house

HB 3613, A bill to be entitled An Act relating to identification cards issued to peace officers, reserve law enforcement officers, and honorably retired peace officers by a law enforcement agency or other government entity.

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

SECTION 1. Chapter 614, Government Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. PEACE OFFICER IDENTIFICATION CARDS

Sec. 614.121. DEFINITIONS. In this subchapter:

(1) "Full-time peace officer" means a person elected, employed, or appointed as a peace officer under Article 2.12, Code of Criminal Procedure, or other law, who:

(A) works as a peace officer on average at least 32 hours per week, exclusive of paid vacation; and

(B) is compensated by this state or a political subdivision of this state at least at the federal minimum wage and is entitled to all employee benefits offered to a peace officer by the state or political subdivision.

(2) "Honorably retired peace officer" means a former peace officer who:

(A) previously served but is not currently serving as an elected, appointed, or employed peace officer under Article 2.12, Code of Criminal Procedure, or other law;

(B) did not retire in lieu of any disciplinary action;

(C) was eligible to retire from a law enforcement agency in this state or was ineligible to retire only as a result of an injury received in the course of the officer's employment with the agency; and

(D) is eligible to receive a pension or annuity for service as a law enforcement officer in this state or is ineligible to receive a pension or annuity only because the law enforcement agency that employed the officer does not offer a pension or annuity to its employees.

(3) "Part-time peace officer" means a person elected, employed, or appointed as a peace officer under Article 2.12, Code of Criminal Procedure, or other law, who:

(A) works as a peace officer on average less than 32 hours per week, exclusive of paid vacation; and

(B) is compensated by this state or a political subdivision of this state at least at the federal minimum wage and is entitled to all employee benefits offered to a peace officer by the state or political subdivision.

(4) "Reserve law enforcement officer" has the meaning assigned by Section 1701.001, Occupations Code.

Sec. 614.122. PEACE OFFICERS. (a) The law enforcement agency or other governmental entity that appoints or employs a peace officer shall issue an identification card to its full-time or part-time peace officers.

(b) The identification card must include:

(1) the full name of the peace officer;

(2) a photograph of the peace officer consistent with the peace officer's appearance;

(3) the name of the law enforcement agency or other governmental entity that appointed or employs the peace officer or that the peace officer was elected to serve;

(4) if applicable, the signature of the person appointing or employing the person as a peace officer on behalf of the law enforcement agency or other governmental entity;

(5) a brief description of the peace officer, including the peace officer's height, weight, and eye color;

(6) the thumbprint of the peace officer or a bar code with a unique identification label for the peace officer;

(7) the date the law enforcement agency or other governmental entity appointed or employed the peace officer;

(8) the date the law enforcement agency or other governmental entity issued the card to the peace officer; and

(9) a phone number operational 24 hours a day, seven days a week that a person may call to verify the validity of the identification card.

(c) On the identification card, the law enforcement agency or other governmental entity that issues the card shall print:

(1) "State of Texas" and the state seal; and

(2) "This identification card certifies that (insert name of peace officer) is commissioned by (insert name of law enforcement agency or other governmental entity that appoints or employs the peace officer) as a (insert "full-time peace officer" or "part-time peace officer")."

(d) The head of a law enforcement agency or other governmental entity that appoints or employs a peace officer shall recover the identification card at the time of the peace officer's resignation or termination.

Sec. 614.123. RESERVE LAW ENFORCEMENT OFFICER. (a) The law enforcement agency or other governmental entity that appoints or employs a reserve law enforcement officer shall issue an identification card to its reserve law enforcement officers.

(b) The identification card must include:

(1) the full name of the reserve law enforcement officer;

(2) a photograph of the reserve law enforcement officer consistent with the reserve law enforcement officer's appearance;

(3) the name of the law enforcement agency or other governmental entity that appointed or employs the reserve law enforcement officer;

(4) if applicable, the signature of the person appointing or employing the person as a reserve law enforcement officer on behalf of the law enforcement agency or other governmental entity;

(5) a brief description of the reserve law enforcement officer, including the reserve law enforcement officer's height, weight, and eye color;

(6) the thumbprint of the reserve law enforcement officer or a bar code with a unique identification label for the reserve law enforcement officer;

(7) the date the law enforcement agency or other governmental entity appointed or employed the reserve law enforcement officer;

(8) the date the law enforcement agency or other governmental entity issued the card to the reserve law enforcement officer; and

(9) a phone number operational 24 hours a day, seven days a week that a person may call to verify the validity of the identification card.

(c) On the identification card, the law enforcement agency or other governmental entity that issues the card shall print:

(1) "State of Texas" and the state seal; and

(2) "This identification card certifies that (insert name of reserve law enforcement officer) is commissioned by (insert name of law enforcement agency or other governmental entity that appoints or employs the reserve law enforcement officer) as a reserve law enforcement officer."

(d) The head of a law enforcement agency or other governmental entity that appoints or employs a reserve law enforcement officer shall recover the identification card at the time of the reserve law enforcement officer's resignation or termination.

Sec. 614.124. HONORABLY RETIRED PEACE OFFICER. (a) The law enforcement agency or other governmental entity that was the last entity to appoint or employ an honorably retired peace officer as a peace officer may issue an identification card to its honorably retired peace officers.

(b) The identification card must include:

(1) the full name of the honorably retired peace officer;

(2) a photograph of the honorably retired peace officer consistent with the honorably retired peace officer's appearance;

(3) the name of the law enforcement agency or other governmental entity that issued the card to the honorably retired peace officer;

(4) if applicable, the signature of the person authorizing the issuance of the card on behalf of the law enforcement agency or other governmental entity to the honorably retired peace officer;

(5) a brief description of the honorably retired peace officer, including the honorably retired peace officer's height, weight, and eye color;

(6) the thumbprint of the honorably retired peace officer or a bar code with a unique identification label for the honorably retired peace officer;

(7) the date the honorably retired peace officer last served as a peace officer for the law enforcement agency or other governmental entity;

(8) the date the law enforcement agency or other governmental entity issued the card to the honorably retired peace officer; and

(9) a phone number operational 24 hours a day, seven days a week that a person may call to verify the validity of the identification card.

(c) On the identification card, the law enforcement agency or other governmental entity that issues the card shall print:

(1) "State of Texas" and the state seal; and

(2) "This identification card certifies that (insert name of honorably retired peace officer) is an honorably retired peace officer of (insert name of law enforcement agency or other governmental entity that last appointed or employed the honorably retired peace officer)."

(d) The head of a law enforcement agency or other governmental entity that issued the identification card shall recover the identification card on the date the identification card expires.

Sec. 614.125. EXPIRATION DATE. An identification card issued under this subchapter expires on a date specified by the law enforcement agency or other governmental entity issuing the card.

Sec. 614.126. TAMPER-PROOF CARDS. An identification card issued under this subchapter must be, to the extent practicable, tamper-proof.

Sec. 614.127. LOST OR STOLEN CARDS. If an identification card issued under this subchapter is lost or stolen, the law enforcement agency or other governmental entity issuing the card may:

(1) require a peace officer, reserve law enforcement officer, or honorably retired peace officer to submit an affidavit executed by the peace officer, reserve law enforcement officer, or honorably retired peace officer to the law enforcement agency or other governmental entity issuing the card stating that the identification card was lost or stolen; and

(2) issue a duplicate identification card to the peace officer, reserve law enforcement officer, or honorably retired peace officer.

SECTION 2. (a) Except as provided by Subsection (b) of this section, each law enforcement agency or other governmental entity required to issue identification cards under Subchapter H, Chapter 614, Government Code, as added by this Act, shall issue the cards not later than January 1, 2008.

(b) Each law enforcement agency that appoints or employs in the aggregate at least 1,000 full-time or part-time peace officers and reserve law enforcement officers shall issue the cards not later than January 1, 2010.

SECTION 3. This Act takes effect September 1, 2007.

Representative Latham moved to adopt the conference committee report on **HB 3613**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 3613** prevailed by (Record 1942): 147 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; 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; Harless; 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 — Bonnen.

REMARKS ORDERED PRINTED

Representative Leibowitz moved to print all of today's remarks regarding the motion to vacate the chair.

The motion prevailed.

SB 6 - ADOPTION OF CONFERENCE COMMITTEE REPORT

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

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

A record vote was requested.

The motion to adopt the conference committee report on **SB 6** prevailed by (Record 1943): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; 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; 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; Harless; 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; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent — Bonnen; Davis, J.; Davis, Y.; Flores; Talton.

SB 765 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Frost submitted the conference committee report on **SB 765**.

Representative Frost moved to adopt the conference committee report on **SB 765**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 765** prevailed by (Record 1944): 129 Yeas, 14 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; Berman; Bohac; Bolton; Branch; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Creighton; Crownover; Darby; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Frost; Gallego; Garcia; Gattis; Giddings; Gonzales; Gonzalez Tourelles; Goolsby; Guillen; 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; Kruse; Kuempel; Latham; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Peña; Phillips; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Solomons; Strama; Straus; Swinford; Talton; Thompson; Truitt; Vaught; Veasey; Vo; West; Woolley; Zerwas.

Nays — Brown, B.; Crabb; Flynn; Geren; Harless; Harper-Brown; Laubenberg; O'Day; Paxton; Riddle; Smithee; Taylor; Van Arsdale; Zedler.

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

Absent — Bonnen; Davis, J.; Haggerty; Martinez Fischer; Villarreal.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 1944. I intended to vote no.

C. Howard

I was shown voting yes on Record No. 1944. I intended to vote no.

Talton

SB 1499 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Corte submitted the conference committee report on **SB 1499**.

Representative Corte moved to adopt the conference committee report on **SB 1499**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 1499** prevailed by (Record 1945): 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; 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; Harless; 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; 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; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent — Deshotel; McCall; Mowery; Pickett.

HR 2872 - ADOPTED
(by Hochberg)

The following privileged resolution was laid before the house:

HR 2872

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 1871** (the compilation and reporting by the Texas Education Agency of certain data regarding students enrolled in public school or in preschool programs) to consider and take action on the following matter:

House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following:

SECTION 1. Section 28.006, Education Code, is amended by amending Subsection (d) and adding Subsection (d-1) to read as follows:

(d) The superintendent of each school district shall:

(1) report to the commissioner and the board of trustees of the district the results of the reading instruments; ~~and~~

(2) report, in writing, to a student's parent or guardian the student's results on the reading instrument; and

(3) using the school readiness certification system provided to the school district in accordance with Section 29.161(e), report electronically each student's raw score on the reading instrument to the agency for use in the school readiness certification system.

(d-1) The agency shall contract with the State Center for Early Childhood Development to receive and use scores under Subsection (d)(3) on behalf of the agency.

SECTION 3. Section 29.161, Education Code, is amended by amending Subsection (c) and adding Subsections (d), (e), and (f) to read as follows:

(c) The system must:

(1) be reflective of research in the field of early childhood care and education;

(2) be well-grounded in the cognitive, social, and emotional development of young children; ~~and~~

(3) apply a common set of criteria to each program provider seeking certification, regardless of the type of program or source of program funding; and

(4) be capable of fulfilling the reporting and notice requirements of Sections 28.006(d) and (g).

(d) The agency shall collect each student's raw score results on the reading instrument administered under Section 28.006 from each school district using the system created under Subsection (a) and shall contract with the State Center for Early Childhood Development for purposes of this section.

(e) The State Center for Early Childhood Development shall, using funds appropriated for the school readiness certification system, provide the system created under Subsection (a) to each school district to report each student's raw score results on the reading instrument administered under Section 28.006.

(f) The agency shall:

(1) provide assistance to the State Center for Early Childhood Development in developing and adopting the school readiness certification system under this section, including providing access to data for the purpose of locating the teacher and campus of record for students; and

(2) require confidentiality and other security measures for student data provided to the State Center for Early Childhood Development as the agency's agent, consistent with the Family Educational Rights and Privacy Act (20 U.S.C. Section 1232g).

Explanation: The change is necessary to add provisions to the bill related to the collection of data regarding students enrolled in preschool programs.

HR 2872 was adopted.

SB 1871 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hochberg submitted the conference committee report on **SB 1871**.

Representative Hochberg moved to adopt the conference committee report on **SB 1871**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 1871** prevailed by (Record 1946): 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; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Tourelles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; 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; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Vo; West; Woolley; Zedler; Zerwas.

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

Absent — Mowery; Ritter; Veasey; Villarreal.

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).

HR 2879 - ADOPTED (by Bonnen and Eiland)

The following privileged resolution was laid before the house:

HR 2879

BE IT RESOLVED by the House of Representatives of the State of Texas, 80th Legislature, Regular Session, 2007, That House Rule 13, Sections 9(a)(3) and (4), be suspended as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **HB 1251** (the authority of a public agency, political subdivision, county, or municipality to enforce a solid waste collection and transportation services franchise or contract) to consider and take action on the addition to Section 1 of the bill of a new Subsection (h), Section 364.034, Health and Safety Code, to read

(h) This section does not apply to a private entity that contracts to provide temporary solid waste disposal services to a construction project.

Explanation: The addition of the above Subsection (h) is necessary to prevent requirements concerning the use of solid waste collection and transportation services from being applied to those who may use temporary services for a construction project. Suspending limitations on conference committee jurisdiction, **HB 1251**.

HR 2879 was adopted.

HB 1251 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Bonnen submitted the following conference committee report on **HB 1251**:

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 1251** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Wentworth
 Nichols
 Patrick
 Seliger
 Shapleigh

On the part of the senate

Bonnen
 Driver
 Eiland
 Kuempel
 T. King

On the part of the house

HB 1251, A bill to be entitled An Act relating to a public agency's, county's, or municipality's authority to enforce a solid waste collection and transportation services franchise.

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

SECTION 1. Section 364.034, Health and Safety Code, is amended by amending Subsection (e) and adding Subsections (f) and (g) and (h) to read as follows:

(e) Except as provided by Subsections (f), (g), and (h) this section does not apply to a person who provides the public or private entity, public agency, or county with written documentation that the person is receiving solid waste disposal services from another entity. Nothing in this section shall limit the authority of a public agency, including a county or a municipality, to enforce its grant of a franchise or contract for solid waste collection and transportation services within its territory. Except as provided by Subsection (f), the governing body of a municipality may provide that a municipality may provide that a franchise it grants or a contract it enters into for solid was collection and transportation services under this subchapter or under other law supersedes inside of the municipality's boundaries any other franchise granted or contract entered into under this subchapter.

(f) Notwithstanding the other provisions of this section, a political subdivision, including a county or a municipality, may not restrict the right of an entity to contract with a licensed waste hauler for the collection and removal of domestic septage or of grease trap waste, grit trap waste, lint trap waste, or sand trap waste.

(g) Except as provided by this subsection, a person is exempt from the application of a requirement adopted by a public agency or county under Subsection (a) if the person, on the date the requirement is adopted, is receiving under a contract in effect on that date solid waste disposal services at a level that is the same as or higher than the level of services that otherwise would be required. The exception provided by this subsection does not apply to a requirement adopted under this section by a municipality. To qualify for the exemption provided by this subsection, the person must provide to the public agency or county written documentation acceptable to the public agency or county not later than the 30th day before the date the otherwise required services are scheduled to begin. The person who provides solid waste disposal services to a person who qualifies for the exemption shall notify the public agency or county that the services under the contract have stopped not later than the 15th day after the date those services are topped for any reason.

(h) This section does not apply to a private entity that contracts to provide temporary solid waste disposal services to a construction project.

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.

HB 1251 - POINTS OF ORDER

Representative Martinez raised a point of order against further consideration of **HB 1251** under Rule 8, Section 3 of the House Rules and Article III, Section 35 of the Texas Constitution on the grounds that the conference committee report violates the one subject rule.

The chair overruled the point of order, and had read the following statement:

The conference committee report provides for the regulation of solid waste disposal collection and transportation services, including construction waste and wastes collected in grease traps, grit traps, and other traps to collect waste. The contents of the bill fit within the subject of the authority of a public agency (as defined by Chapter 364, Health and Safety Code) to regulate solid waste disposal and transportation services by means of a franchise or contract for such services.

The point of order is respectfully overruled.

Representative Martinez raised a point of order against further consideration of **HB 1251** under Rule 11, Section 3 of the House Rules and Article III, Section 30 of the Texas Constitution on the grounds that the conference committee report changes the original purpose of the bill.

The chair overruled the point of order, and had read the following statement:

While Section 1 of the house engrossment involved matters under Chapter 363, Health and Safety Code, concerning the regulation of services to collect and remove wastes from grease traps, grit traps, and other traps to collect waste, Sections 2 and 3 of the engrossment concern solid waste disposal and transportation services under Chapter 364, Health and Safety Code, which provisions must be included in assessing the original purpose of the bill. The

proposed amendment by Section 3 of the engrossment would have bracketed its treatment of the regulation of solid waste collection and transportation services, including by franchise in unincorporated areas of the bracketed counties, but the treatment of broad categories of waste is clear, and duplicates for purposes of the bracketed area, substantially, the provisions in Section 364.034, Health and Safety Code, which are applicable statewide. The conference committee report for **HB 1251** treats that purpose in a statewide manner.

The point of order is respectfully overruled.

Representative Bonnen moved to adopt the conference committee report on **HB 1251**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1251** prevailed by (Record 1947): 135 Yeas, 5 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; 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; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Heflin; Hernandez; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Isett; Jackson; Jones; Keffer; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Lucio; Macias; Madden; Mallory Caraway; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Mowery; Murphy; Naishtat; O'Day; Oliveira; Olivo; Orr; Ortiz; 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; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

Nays — Gonzales; Herrero; Leibowitz; Martinez; Vaught.

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

Absent — Bolton; Coleman; Davis, J.; Hughes; King, P.; Morrison; Noriega; Pierson.

HB 1146 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Bonnen submitted the following conference committee report on **HB 1146**:

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 1146** 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
Duncan
Jackson
Seliger

Bonnen
Berman
Castro
Flynn
Hardcastle

On the part of the senate

On the part of the house

HB 1146, A bill to be entitled An Act relating to the authority of small cities to conduct elections only by mail.

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

SECTION 1. Subtitle B, Title 7, Election Code, is amended by adding Chapter 107 to read as follows:

CHAPTER 107. VOTING BY MAIL IN CERTAIN SMALL CITIES

Sec. 107.001. AUTHORITY TO CONDUCT MAIL-ONLY ELECTION.

(a) A city with a population of less than 250 may by ordinance provide that one or more elections held by the city will be conducted only by mail under this chapter.

(b) The ordinance must be adopted before the 90th day before the election date of the first election conducted by mail under this chapter.

Sec. 107.002. CONDUCT OF MAIL-ONLY ELECTION. (a) In an election held under this chapter:

(1) a person must vote early by mail; and

(2) voting by personal appearance is not permitted.

(b) Not more than 45 days and not less than 21 days before the deadline for requesting a ballot under this section, the early voting clerk shall send to each registered voter of the city a postage-paid ballot application. The city shall include with the ballot application a statement to educate voters about the mail-only election that contains instructions on how to obtain a ballot and how to vote in the election.

(c) To vote in an election held under this chapter, a registered voter must request a ballot from the early voting clerk, in writing or in person at the office of the early voting clerk, not later than the seventh day before election day. A written request must be signed by the voter. The early voting clerk shall provide an official ballot to each registered voter in the city who requests a ballot under this subsection in the manner provided by Chapter 86.

(d) The balloting materials must be sent to the address at which the voter is registered to vote, unless the voter has applied for a ballot to be voted early by mail under Chapter 84 and the balloting materials are to be sent to a different address as authorized by Section 86.003(c).

Sec. 107.003. NOTICE OF MAIL-ONLY ELECTION. (a) A city conducting an election by mail under this chapter shall publish notice in a newspaper of general circulation in the city at least once during the week before the deadline for a voter to request a ballot.

(b) The notice must state:

(1) that there will be no voting by personal appearance for the election;

(2) that a ballot will not be mailed to a voter and the voter may not vote in the election unless the voter requests a ballot in writing or in person from the early voting clerk;

(3) that if requested, the ballot will be mailed to a registered voter at the address at which the voter is registered to vote, unless the voter has submitted an application to vote early by mail on grounds of age, disability, confinement in jail, or absence from the voter's county of residence, in which case the ballot will be mailed to an authorized address stated on the application;

(4) the deadline for requesting a ballot; and

(5) the deadline for returning marked ballots.

Sec. 107.004. TIME FOR PROVIDING BALLOT. (a) Except as provided by Subsection (b), the balloting materials for an election held under this chapter shall be mailed to a voter not later than the 25th day before election day.

(b) Section 86.004 applies to the mailing of a ballot to a voter who applied for a ballot to be voted early by mail under Chapter 84.

Sec. 107.005. APPLICABILITY OF EARLY VOTING BY MAIL PROVISIONS. Except as otherwise provided by this chapter, the provisions applicable to early voting by mail apply to an election held under this chapter.

Sec. 107.006. ADDITIONAL PROCEDURES. The secretary of state shall prescribe any additional procedures necessary to implement this chapter.

Sec. 107.007. SUNSET PROVISION. This chapter expires July 1, 2009.

SECTION 2. Section 84.004, Election Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) It is an exception to the application of Subsection (a) that the person signed early voting ballot applications for more than one applicant in an election conducted under Chapter 107. This subsection expires July 1, 2009.

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 Bonnen moved to adopt the conference committee report on **HB 1146**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1146** prevailed by (Record 1948): 145 Yeas, 3 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; Berman; Bohac; 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; Harless; Harper-Brown; Hartnett; Heflin; Hernandez; 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; 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.

Nays — Bolton; Herrero; Leibowitz.

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

HB 945 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Herrero submitted the following conference committee report on **HB 945**:

Austin, Texas, May 26, 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 945** 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
Carona
Duncan
Janek
Lucio

Herrero
Branch
Eissler
Hochberg
Zedler

On the part of the senate

On the part of the house

HB 945, A bill to be entitled An Act relating to the dates on which certain independent school districts may hold an election of trustees.

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

SECTION 1. Section 41.0051, Election Code, is amended to read as follows:

Sec. 41.0051. GENERAL ELECTION IN CERTAIN COASTAL CITIES.

(a) The general election for officers of a city that borders the Gulf of Mexico, has a population of more than 230,000 according to the 1980 census, and held its general election for officers in 1987 on the first Saturday in April may be held on any Saturday in April in odd-numbered years.

(b) An independent school district located wholly or partly in a city holding an election authorized under Subsection (a) may hold its general election for trustees on the same date as a joint election with the city.

SECTION 2. Section 11.0581(a), Education Code, is amended to read as follows:

(a) An election for trustees of an independent school district shall be held on the same date as:

(1) the election for the members of the governing body of a municipality located in the school district; ~~or~~

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

(3) the election for the members of the governing body of a hospital district, if the school district:

(A) is wholly or partly located in a county with a population of less than 30,000 that is adjacent to a county with a population of more than three million; and

(B) held its election for trustees jointly with the election for the members of the governing body of the hospital district before May 2007.

SECTION 3. Not later than December 31, 2007, the board of trustees of an independent school district may:

(1) change the date on which it holds its general election for trustees to allow the district to hold its election jointly with a municipality holding an election under Section 41.0051, Election Code, or a hospital district as described by Section 11.0581(a)(3), Education Code; and

(2) adjust the terms of office of trustees to conform to the change of the election date made under Subdivision (1) of this section.

SECTION 4. This Act takes effect September 1, 2007.

Representative Herrero moved to adopt the conference committee report on **HB 945**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 945** prevailed by (Record 1949): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; 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; Harless; 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; 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; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent — Bolton; Cook, R.; Hill; Miller; Swinford.

STATEMENT OF VOTE

When Record No. 1949 was taken, I was in the house but away from my desk. I would have voted yes.

Bolton

HB 3674 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative J. Davis submitted the following conference committee report on **HB 3674**:

Austin, Texas, May 26, 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 3674** 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
Harris
Deuell

J. Davis
Gonzales
Hopson
Noriega
Taylor

On the part of the senate

On the part of the house

HB 3674, A bill to be entitled An Act relating to the operation of property owners' associations.

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

SECTION 1. Section 551.0015(a), Government Code, is amended to read as follows:

(a) A property owners' association is subject to this chapter in the same manner as a governmental body:

(1) if:

(A) [~~(+)~~] membership in the property owners' association is mandatory for owners or for a defined class of owners of private real property in a defined geographic area in a county with a population of 2.8 million or more or in a county adjacent to a county with a population of 2.8 million or more;

(B) [~~(=)~~] the property owners' association has the power to make mandatory special assessments for capital improvements or mandatory regular assessments; and

(C) [~~3~~] the amount of the mandatory special or regular assessments is or has ever been based in whole or in part on the value at which the state or a local governmental body assesses the property for purposes of ad valorem taxation under Section 20, Article VIII, Texas Constitution; or

(2) if the property owners' association:

(A) provides maintenance, preservation, and architectural control of residential and commercial property within a defined geographic area in a county with a population of 2.8 million or more or in a county adjacent to a county with a population of 2.8 million or more; and

(B) is a corporation that:

(i) is governed by a board of trustees who may employ a general manager to execute the association's bylaws and administer the business of the corporation;

(ii) does not require membership in the corporation by the owners of the property within the defined area; and

(iii) was incorporated before January 1, 2006.

SECTION 2. Section 552.0036, Government Code, is amended to read as follows:

Sec. 552.0036. CERTAIN PROPERTY OWNERS' ASSOCIATIONS SUBJECT TO LAW. A property owners' association is subject to this chapter in the same manner as a governmental body:

(1) if:

(A) [~~4~~] membership in the property owners' association is mandatory for owners or for a defined class of owners of private real property in a defined geographic area in a county with a population of 2.8 million or more or in a county adjacent to a county with a population of 2.8 million or more;

(B) [~~2~~] the property owners' association has the power to make mandatory special assessments for capital improvements or mandatory regular assessments; and

(C) [~~3~~] the amount of the mandatory special or regular assessments is or has ever been based in whole or in part on the value at which the state or a local governmental body assesses the property for purposes of ad valorem taxation under Section 20, Article VIII, Texas Constitution; or

(2) if the property owners' association:

(A) provides maintenance, preservation, and architectural control of residential and commercial property within a defined geographic area in a county with a population of 2.8 million or more or in a county adjacent to a county with a population of 2.8 million or more; and

(B) is a corporation that:

(i) is governed by a board of trustees who may employ a general manager to execute the association's bylaws and administer the business of the corporation;

(ii) does not require membership in the corporation by the owners of the property within the defined area; and

(iii) was incorporated before January 1, 2006.

SECTION 3. Section 201.001(b), Property Code, is amended to read as follows:

(b) The provisions of this chapter relating to extension of the term of, renewal of, or creation of restrictions do not apply to a subdivision if, by the express terms of the instrument creating existing restrictions, some or all of the restrictions affecting the real property within the subdivision provide:

(1) for automatic extensions of the term of the restrictions for an indefinite number of successive specified periods of at least 10 years subject to a right of waiver or termination, in whole or in part, by a specified percentage of less than 50 percent plus one of the owners of real property interests in the subdivision, as set forth in the instrument creating the restrictions; or

(2) for an indefinite number of successive extensions of at least 10 years of the term of the restrictions by written and filed agreement of a specified percentage of less than 50 percent plus one of the owners of real property interests in the subdivision, as authorized by the instrument creating the restrictions.

SECTION 4. Section 201.004(a), Property Code, is amended to read as follows:

(a) A petition may be filed under this chapter to:

(1) extend or renew an unexpired restriction;

(2) ~~[-to]~~ create a restriction;

(3) ~~[-or to]~~ add to or modify an existing restriction; or

(4) modify an existing provision in an instrument creating a restriction that provides for extension of those restrictions.

SECTION 5. Section 204.003, Property Code, is amended to read as follows:

Sec. 204.003. APPLICATION OF PROVISIONS OF RESTRICTIVE COVENANTS ~~[PREVAIL]~~ IN CERTAIN CIRCUMSTANCES. (a) An express designation in a document creating restrictions applicable to a residential real estate subdivision that provides for the extension of, addition to, or modification of existing restrictions by a designated number of owners of real property in the subdivision prevails over the provisions of this chapter.

(b) A document creating restrictions that provides for the extension or renewal of restrictions and does not provide for modification or amendment of restrictions may be modified under this chapter, including modifying the provision that provides for extension or renewal of the restrictions.

SECTION 6. Section 209.005, Property Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) A property owners' association described by Section 552.0036(2), Government Code, shall make the books and records of the association, including financial records, reasonably available to any person requesting access to the books or records in accordance with Chapter 552, Government Code. Subsection (a) does not apply to a property owners' association to which this subsection applies.

SECTION 7. Section 209.003(b), Property Code, is amended to read as follows:

(b) Except as otherwise provided by this chapter, this ~~[This]~~ chapter applies only to a property owners' association that requires mandatory membership in the association for all or a majority of the owners of residential property within the subdivision subject to the association's dedicatory instruments.

SECTION 8. Chapter 209, Property Code, is amended by adding Section 209.0055 to read as follows:

Sec. 209.0055. VOTING. (a) This section applies only to a property owners' association that:

(1) provides maintenance, preservation, and architectural control of residential and commercial property within a defined geographic area in a county with a population of 2.8 million or more or in a county adjacent to a county with a population of 2.8 million or more; and

(2) is a corporation that:

(A) is governed by a board of trustees who may employ a general manager to execute the association's bylaws and administer the business of the corporation;

(B) does not require membership in the corporation by the owners of the property within the defined area; and

(C) was incorporated before January 1, 2006.

(b) A property owners' association described by Subsection (a) may not bar a property owner from voting in an association election solely based on the fact that:

(1) there is a pending enforcement action against the property owner; or

(2) the property owner owes the association any delinquent assessments, fees, or fines.

SECTION 9. (a) Section 551.0015, Government Code, as amended by this Act, applies only to a property owners' association meeting that is held on or after September 1, 2007. A property owners' association meeting that is held before September 1, 2007, is governed by the law in effect at the time the meeting was held, and that law is continued in effect for that purpose.

(b) Section 552.0036, Government Code, as amended by this Act, applies only to a request for records or information made to a property owners' association on or after September 1, 2007. A request for records or information that is made before September 1, 2007, is governed by the law in effect at the time the request was made, and that law is continued in effect for that purpose.

(c) Section 209.005, Property Code, as amended by this Act, applies only to a request for access to records or information made to a property owners' association on or after September 1, 2007. A request for access to records or information that is made before September 1, 2007, is governed by the law in effect at the time the request was made, and that law is continued in effect for that purpose.

SECTION 10. This Act takes effect September 1, 2007.

Representative J. Davis moved to adopt the conference committee report on **HB 3674**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 3674** prevailed by (Record 1950): 142 Yeas, 1 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.; 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; Hancock; Hardcastle; Harless; 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; 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; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

Nays — Harper-Brown.

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

Absent — Cook, R.; Hamilton; Hill; Martinez Fischer; Swinford.

STATEMENT OF VOTE

I was shown voting no on Record No. 1950. I intended to vote yes.

Harper-Brown

SB 1731 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Isett submitted the conference committee report on **SB 1731**.

Representative Isett moved to adopt the conference committee report on **SB 1731**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 1731** prevailed by (Record 1951): 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; Farias; Farrar; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; 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; 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; 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 — Flores; McClendon; Puente; Strama.

STATEMENT OF VOTE

When Record No. 1951 was taken, I was in the house but away from my desk. I would have voted yes.

Strama

SB 960 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Haggerty submitted the conference committee report on **SB 960**.

Representative Haggerty moved to adopt the conference committee report on **SB 960**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 960** prevailed by (Record 1952): 141 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; Chisum; Christian; Cohen; Coleman; Cook, B.; 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; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hodge; Homer; 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; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent — Anchia; Chavez; Cook, R.; Frost; Hochberg; Hopson; Swinford.

STATEMENT OF VOTE

When Record No. 1952 was taken, I was in the house but away from my desk. I would have voted yes.

Anchia

HB 610 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative F. Brown submitted the following conference committee report on **HB 610**:

Austin, Texas, May 26, 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 610** 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.

Hegar
Nichols
Patrick
Watson

F. Brown
B. Brown
D. Howard
Isett
Hancock

On the part of the senate

On the part of the house

HB 610, A bill to be entitled An Act relating to a plan to provide services to an area annexed by a municipality.

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

SECTION 1. Section 43.052, Local Government Code, is amended by adding Subsection (k) to read as follows:

(k) Notwithstanding the restrictions imposed by Subsections (e) and (g), under an agreement described by Section 43.0563 a municipality may annex an area for full or limited purposes at any time on petition of the owner of the area for the annexation if the area:

(1) is in the municipality's annexation plan; or

(2) was previously in the municipality's annexation plan but removed under Subsection (e).

SECTION 2. Section 43.056(b), Local Government Code, is amended to read as follows:

(b) The service plan, which must be completed in the period provided by Subsection (a) before the annexation, must include a program under which the municipality will provide full municipal services in the annexed area no later than 2-1/2 years after the effective date of the annexation, in accordance with Subsection (e), unless certain services cannot reasonably be provided within that period and the municipality proposes a schedule for providing those services, and must include a list of all services required by this section to be provided under the

plan. If the municipality proposes a schedule to extend the period for providing certain services, the schedule must provide for the provision of full municipal services no later than 4-1/2 years after the effective date of the annexation. ~~[If the area was annexed after December 1, 1998, and before September 1, 1999, the municipality shall provide sewer services in the annexed area as provided by this subsection, except that, no later than five years after the effective date of the annexation, the municipality may not provide sewer services in the annexed area by means of a package wastewater treatment plant.]~~ However, under the program if the municipality provides any of the following services within the corporate boundaries of the municipality before annexation, the municipality must provide those services in the area proposed for annexation on the effective date of the annexation of the area:

- (1) police protection;
- (2) fire protection;
- (3) emergency medical services;
- (4) solid waste collection, except as provided by Subsection (o);
- (5) operation and maintenance of water and wastewater facilities in the annexed area that are not within the service area of another water or wastewater utility;
- (6) operation and maintenance of roads and streets, including road and street lighting;
- (7) operation and maintenance of parks, playgrounds, and swimming pools; and
- (8) operation and maintenance of any other publicly owned facility, building, or service.

SECTION 3. Section 43.0563, Local Government Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The governing body of a municipality with a population of less than 1.6 million may negotiate and enter into a written agreement ~~[with representatives designated under Section 43.0562(b)]~~ for the provision of services and the funding of the services in an ~~[the]~~ area with:

- (1) representatives designated under Section 43.0562(b), if the area is included in the municipality's annexation plan; or
- (2) an owner of an area within the extraterritorial jurisdiction of the municipality if the area is not included in the municipality's annexation plan.

~~(a-1) An [The] agreement under this section may also include an agreement related to permissible land uses and compliance with municipal ordinances.~~

SECTION 4. Section 43.0564(a), Local Government Code, is amended to read as follows:

(a) If the municipality and the representatives of the area proposed for annexation cannot reach an agreement for the provision of services under Section 43.0562 or if the municipality and the property owner representatives described by Section 43.0563(a)(1) cannot reach an agreement for the provision of services in lieu of annexation under Section 43.0563, either party by majority decision of the party's representatives may request the appointment of an arbitrator to resolve the service plan issues in dispute. The request must be made in writing to the

other party before the 60th day after the date the service plan is completed under Section 43.056. The municipality may not annex the area under another section of this chapter during the pendency of the arbitration proceeding or an appeal from the arbitrator's decision.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

Representative F. Brown moved to adopt the conference committee report on **HB 610**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 610** prevailed by (Record 1953): 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.; 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 Tourelles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; 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; 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 — Cook, R.; Dutton; Farrar; Quintanilla.

STATEMENT OF VOTE

When Record No. 1953 was taken, I was temporarily out of the house chamber. I would have voted yes.

R. Cook

(Gattis in the chair)

HB 1113 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Turner submitted the following conference committee report on **HB 1113**:

Austin, Texas, May 26, 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 1113** 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

Turner

Deuell

Dutton

Hegar

Madden

Hinojosa

Bolton

On the part of the senate

On the part of the house

HB 1113, A bill to be entitled An Act relating to reporting research on children within the juvenile probation system.

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

SECTION 1. Subchapter C, Chapter 141, Human Resources Code, is amended by adding Section 141.0486 to read as follows:

Sec. 141.0486. REPORTING CONCERNING RESEARCH PROGRAMS OR STUDIES. (a) The commission shall keep records relating to children within the juvenile probation system that participate in research programs or studies.

(b) The records must show, for each calendar quarter and for each calendar year:

(1) the number of children participating in research programs or studies for the appropriate reporting period;

(2) the type of research program or study in which each child is participating;

(3) the name of the principal investigator conducting the research program or study; and

(4) the entity sponsoring the research program or study.

(c) The commission shall submit a report that contains the information in the records kept under Subsection (b) on or before the 15th day after the last day of the appropriate reporting period to the:

(1) governor;

(2) lieutenant governor;

(3) speaker of the house of representatives; and

(4) members of the senate and house of representatives.

(d) A report submitted under this section is public information under Chapter 552, Government Code.

SECTION 2. This Act applies to a child within the juvenile probation system without regard to whether the child entered the probation system before, on, or after the effective date of this Act.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

Representative Turner moved to adopt the conference committee report on **HB 1113**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1113** prevailed by (Record 1954): 147 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; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; 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; Taylor; Thompson; Truitt; Turner; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent — Talton.

HB 2383 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Lucio submitted the following conference committee report on **HB 2383**:

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 2383** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Lucio
 Hegar
 Shapiro
 Van de Putte
 On the part of the senate

Lucio
 Strama
 Creighton
 Hancock
 On the part of the house

HB 2383, A bill to be entitled An Act relating to the provision of certain subsidies and scholarships to particular public school students or graduates.

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

SECTION 1. Subchapter F, Chapter 29, Education Code, is amended by adding Section 29.190 to read as follows:

Sec. 29.190. SUBSIDY FOR CERTIFICATION EXAMINATION. (a) A student is entitled to a subsidy under this section if the student:

(1) successfully completes the career and technology program of a school district in which the student receives training and instruction for employment in a certain trade or occupation;

(2) passes a certification examination to qualify for a license or certificate for the trade or occupation; and

(3) demonstrates financial need.

(b) The commissioner shall adopt guidelines for determining financial need consistent with the definition of financial need adopted by the College Board and Education Testing Service.

(c) On approval by the commissioner, the agency shall pay each eligible student an amount equal to the cost paid by the student for the certification examination. To obtain a subsidy under this section, a student must:

(1) pay the fee for the examination; and

(2) submit to the commissioner a written application on a form prescribed by the commissioner demonstrating financial need and the amount of the fee paid by the student for the certification examination.

(d) The commissioner may adopt rules as necessary to implement this section.

SECTION 2. Section 56.203, Education Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) To be eligible for an award through the Early High School Graduation Scholarship program, a person must:

(1) have graduated from a public high school in this state:

(A) in not more than 41 consecutive months and successfully completed the recommended or advanced high school program established under Section 28.025, if the person graduated on or after September 1, 2005;

(B) in not more than 46 ~~[45]~~ consecutive months, with at least 30 hours of college credit, and successfully completed the recommended or advanced high school program established under Section 28.025, if the person graduated on or after September 1, 2005; or

(C) in not more than 36 consecutive months after successfully completing the requirements for a high school diploma, if the person graduated before September 1, 2005, regardless of whether the person successfully completed the recommended or advanced high school program established under Section 28.025;

(2) have attended ~~[high school exclusively in]~~ one or more public high schools in this state for the majority of time the person attended high school; and

(3) be a citizen of the United States or otherwise lawfully authorized to be present in the United States ~~[Texas resident as defined by coordinating board rule].~~

(e) The coordinating board shall adopt rules for determining whether a person attended public high school in this state as required by Subsection (a)(2).

SECTION 3. The changes in law made by this Act to Section 56.203, Education Code, apply only to a student who graduates from a public high school in this state on or after the effective date of this Act. A student who graduates from a public high school in this state before the effective date of this Act and the student's eligibility to participate in the Early High School Graduation Scholarship program are governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 4. This Act applies beginning with the 2007-2008 school year.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

Representative Lucio moved to adopt the conference committee report on **HB 2383**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 2383** prevailed by (Record 1955): 148 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; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; 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.

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

SB 1332 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Chavez submitted the conference committee report on **SB 1332**.

Representative Chavez moved to adopt the conference committee report on **SB 1332**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 1332** prevailed by (Record 1956): 145 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; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; 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; 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; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent — Anchia; O'Day; Veasey.

STATEMENT OF VOTE

When Record No. 1956 was taken, I was in the house but away from my desk. I would have voted yes.

Anchia

HB 4 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Puente submitted the following conference committee report on **HB 4**:

Austin, Texas, May 26, 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 4** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Averitt
Deuell
Uresti

Puente
Creighton
Guillen
Laubenberg
McClendon

On the part of the senate

On the part of the house

HB 4, A bill to be entitled An Act relating to water conservation.

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

SECTION 1. Section 1.003, Water Code, is amended to read as follows:

Sec. 1.003. PUBLIC POLICY. It is the public policy of the state to provide for the conservation and development of the state's natural resources, including:

(1) the control, storage, preservation, and distribution of the state's storm and floodwaters and the waters of its rivers and streams for irrigation, power, and other useful purposes;

(2) the reclamation and irrigation of the state's arid, semiarid, and other land needing irrigation;

(3) the reclamation and drainage of the state's overflowed land and other land needing drainage;

(4) the conservation and development of its forest, water, and hydroelectric power;

(5) the navigation of the state's inland and coastal waters; ~~and~~

(6) the maintenance of a proper ecological environment of the bays and estuaries of Texas and the health of related living marine resources; and

(7) the voluntary stewardship of public and private lands to benefit waters of the state.

SECTION 2. Subchapter A, Chapter 1, Water Code, is amended by adding Section 1.004 to read as follows:

Sec. 1.004. FINDINGS AND POLICY REGARDING LAND STEWARDSHIP. (a) The legislature finds that voluntary land stewardship enhances the efficiency and effectiveness of this state's watersheds by helping to increase surface water and groundwater supplies, resulting in a benefit to the natural resources of this state and to the general public. It is therefore the policy of this state to encourage voluntary land stewardship as a significant water management tool.

(b) "Land stewardship," as used in this code, is the voluntary practice of managing land to conserve or enhance suitable landscapes and the ecosystem values of the land. Land stewardship includes land and habitat management,

wildlife conservation, and watershed protection. Land stewardship practices include runoff reduction, prescribed burning, managed grazing, brush management, erosion management, reseeding with native plant species, riparian management and restoration, and spring and creek-bank protection, all of which benefit the water resources of this state.

SECTION 3. Subtitle A, Title 2, Water Code, is amended by adding Chapter 10 to read as follows:

CHAPTER 10. WATER CONSERVATION ADVISORY COUNCIL

Sec. 10.001. DEFINITIONS. In this chapter:

11.002. (1) "Best management practices" has the meaning assigned by Section

(2) "Board" means the Texas Water Development Board.

Quality. (3) "Commission" means the Texas Commission on Environmental

(4) "Council" means the Water Conservation Advisory Council.

Sec. 10.002. PURPOSE. The council is created to provide the governor, lieutenant governor, speaker of the house of representatives, legislature, board, commission, political subdivisions, and public with the resource of a select council with expertise in water conservation.

Sec. 10.003. CREATION AND MEMBERSHIP. (a) The council is composed of 23 members appointed by the board. The board shall appoint one member to represent each of the following entities or interest groups:

(1) Texas Commission on Environmental Quality;

(2) Department of Agriculture;

(3) Parks and Wildlife Department;

(4) State Soil and Water Conservation Board;

(5) Texas Water Development Board;

(6) regional water planning groups;

(7) federal agencies;

(8) municipalities;

(9) groundwater conservation districts;

(10) river authorities;

(11) environmental groups;

(12) irrigation districts;

(13) institutional water users;

(14) professional organizations focused on water conservation;

(15) higher education;

(16) agricultural groups;

(17) refining and chemical manufacturing;

(18) electric generation;

(19) mining and recovery of minerals;

(20) landscape irrigation and horticulture;

(21) water control and improvement districts;

(22) rural water users; and

(23) municipal utility districts.

(b) Each entity or interest group described by Subsection (a) may recommend one or more persons to fill the position on the council held by the member who represents that entity or interest group. If one or more persons are recommended for a position on the council, the board shall appoint one of the persons recommended to fill the position.

Sec. 10.004. TERMS. (a) Members of the council serve staggered terms of six years, with seven or eight members' terms, as applicable, expiring August 31 of each odd-numbered year.

(b) The board shall fill a vacancy on the council for the unexpired term by appointing a person who has the same qualifications as required under Section 10.003 for the person who previously held the vacated position.

Sec. 10.005. PRESIDING OFFICER. The council members shall select one member as the presiding officer of the council to serve in that capacity until the person's term as a council member expires.

Sec. 10.006. COUNCIL STAFF. On request by the council, the board shall provide any necessary staff to assist the council in the performance of its duties.

Sec. 10.007. PUBLIC MEETINGS AND PUBLIC INFORMATION. (a) The council may hold public meetings as needed to fulfill its duties under this chapter.

(b) The council is subject to Chapters 551 and 552, Government Code.

Sec. 10.008. INAPPLICABILITY OF ADVISORY COMMITTEE LAW. Chapter 2110, Government Code, does not apply to the size, composition, or duration of the council.

Sec. 10.009. COMPENSATION OF MEMBERS. (a) Members of the council serve without compensation but may be reimbursed by legislative appropriation for actual and necessary expenses related to the performance of council duties.

(b) Reimbursement under Subsection (a) is subject to the approval of the presiding officer of the council.

Sec. 10.010. POWERS AND DUTIES OF COUNCIL. The council shall:

(1) monitor trends in water conservation implementation;

(2) monitor new technologies for possible inclusion by the board as best management practices in the best management practices guide developed by the water conservation implementation task force under Chapter 109, Acts of the 78th Legislature, Regular Session, 2003;

(3) monitor the effectiveness of the statewide water conservation public awareness program developed under Section 16.401 and associated local involvement in implementation of the program;

(4) develop and implement a state water management resource library;

(5) develop and implement a public recognition program for water conservation;

(6) monitor the implementation of water conservation strategies by water users included in regional water plans; and

(7) monitor target and goal guidelines for water conservation to be considered by the board and commission.

Sec. 10.011. REPORT. Not later than December 1 of each even-numbered year, the council shall submit to the governor, lieutenant governor, and speaker of the house of representatives a report on progress made in water conservation in this state.

Sec. 10.012. DESIGNATION OF CERTIFIED WATER CONSERVATION TRAINING FACILITIES STUDY. (a) The council shall conduct a study to evaluate the desirability of requiring the board to:

(1) designate as certified water conservation training facilities entities and programs that provide assistance to retail public utilities in developing water conservation plans under Section 13.146; and

(2) give preference to certified water conservation training facilities in making loans or grants for water conservation training and education activities.

(b) Not later than December 1, 2008, the council shall submit a written report containing the findings of the study and the recommendations of the council to the governor, lieutenant governor, and speaker of the house of representatives.

(c) This section expires June 1, 2009.

SECTION 4. Section 11.002, Water Code, is amended by adding Subdivision (15) to read as follows:

(15) "Best management practices" means those voluntary efficiency measures developed by the commission and the board that save a quantifiable amount of water, either directly or indirectly, and that can be implemented within a specified time frame.

SECTION 5. Section 11.0235(b), Water Code, is amended to read as follows:

(b) Maintaining the biological soundness of the state's rivers, lakes, bays, and estuaries is of great importance to the public's economic health and general well-being. The legislature encourages voluntary water and land stewardship to benefit the water in the state, as defined by Section 26.001.

SECTION 6. Subchapter E, Chapter 13, Water Code, is amended by adding Section 13.146 to read as follows:

Sec. 13.146. WATER CONSERVATION PLAN. The commission shall require a retail public utility that provides potable water service to 3,300 or more connections to submit to the executive administrator of the board a water conservation plan based on specific targets and goals developed by the retail public utility and using appropriate best management practices, as defined by Section 11.002, or other water conservation strategies.

SECTION 7. Section 15.102(b), Water Code, is amended to read as follows:

(b) The loan fund may also be used by the board to provide:

(1) grants or loans for projects that include supplying water and wastewater services in economically distressed areas or nonborder colonias as provided by legislative appropriations, this chapter, and board rules, including projects involving retail distribution of those services; and

(2) grants for:

(A) projects for which federal grant funds are placed in the loan fund;

(B) projects, on specific legislative appropriation for those projects; or

(C) water conservation, desalination, brush control, weather modification, regionalization, and projects providing regional water quality enhancement services as defined by board rule, including regional conveyance systems.

SECTION 8. Chapter 16, Water Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. WATER CONSERVATION

Sec. 16.401. STATEWIDE WATER CONSERVATION PUBLIC AWARENESS PROGRAM. (a) The executive administrator shall develop and implement a statewide water conservation public awareness program to educate residents of this state about water conservation. The program shall take into account the differences in water conservation needs of various geographic regions of the state and shall be designed to complement and support existing local and regional water conservation programs.

(b) The executive administrator is required to develop and implement the program required by Subsection (a) in a state fiscal biennium only if the legislature appropriates sufficient money in that biennium specifically for that purpose.

Sec. 16.402. WATER CONSERVATION PLAN REVIEW. (a) Each entity that is required to submit a water conservation plan to the commission under this code shall submit a copy of the plan to the executive administrator.

(b) Each entity that is required to submit a water conservation plan to the executive administrator, board, or commission under this code shall report annually to the executive administrator on the entity's progress in implementing the plan.

(c) The executive administrator shall review each water conservation plan and annual report to determine compliance with the minimum requirements established by Section 11.1271 and the submission deadlines developed under Subsection (e) of this section.

(d) The board may notify the commission if the board determines that an entity has violated this section or a rule adopted under this section. Notwithstanding Section 7.051(b), a violation of this section or of a rule adopted under this section is enforceable in the manner provided by Chapter 7 for a violation of a provision of this code within the commission's jurisdiction or of a rule adopted by the commission under a provision of this code within the commission's jurisdiction.

(e) The board and commission jointly shall adopt rules:

(1) identifying the minimum requirements and submission deadlines for the annual reports required by Subsection (b); and

(2) providing for the enforcement of this section and rules adopted under this section.

SECTION 9. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.969 to read as follows:

Sec. 51.969. ON-SITE RECLAIMED SYSTEM TECHNOLOGIES CURRICULUM. The Texas Higher Education Coordinating Board shall encourage each institution of higher education to develop curriculum and provide related instruction regarding on-site reclaimed system technologies, including rainwater harvesting, condensate collection, or cooling tower blow down.

SECTION 10. Section 447.004, Government Code, is amended by adding Subsections (c-1) and (c-2) to read as follows:

(c-1) The procedural standards adopted under this section must require that on-site reclaimed system technologies, including rainwater harvesting, condensate collection, or cooling tower blow down, or a combination of those system technologies, for nonpotable indoor use and landscape watering be incorporated into the design and construction of:

(1) each new state building with a roof measuring at least 10,000 square feet; and

(2) any other new state building for which the incorporation of such systems is feasible.

(c-2) The procedural standards required by Subsection (c-1) do not apply to a building if the state agency or institution of higher education constructing the building:

(1) determines that compliance with those standards is impractical; and

(2) notifies the state energy conservation office of the determination and provides to the office documentation supporting the determination.

SECTION 11. Section 341.042, Health and Safety Code, is amended to read as follows:

Sec. 341.042. STANDARDS FOR HARVESTED RAINWATER. (a) The commission shall establish recommended standards relating to the domestic use of harvested rainwater, including health and safety standards for treatment and collection methods for harvested rainwater intended for drinking, cooking, or bathing.

(b) The commission by rule shall provide that if a structure is connected to a public water supply system and has a rainwater harvesting system for indoor use:

(1) the structure must have appropriate cross-connection safeguards; and

(2) the rainwater harvesting system may be used only for nonpotable indoor purposes.

(c) Standards and rules adopted by the commission under this chapter governing public drinking water supply systems do not apply to a person:

(1) who harvests rainwater for domestic use; and

(2) whose property is not connected to a public drinking water supply system.

SECTION 12. Chapter 401, Local Government Code, is amended by adding Section 401.006 to read as follows:

Sec. 401.006. WATER CONSERVATION BY HOME-RULE MUNICIPALITY. A home-rule municipality may adopt and enforce ordinances requiring water conservation in the municipality and by customers of the municipality's municipally owned water and sewer utility in the extraterritorial jurisdiction of the municipality.

SECTION 13. Section 1903.053, Occupations Code, is amended to read as follows:

Sec. 1903.053. STANDARDS. (a) The commission shall adopt by rule and enforce standards governing:

- (1) the connection of irrigation systems to any water supply;
- (2) the design, installation, and operation of irrigation systems;
- (3) water conservation; and
- (4) the duties and responsibilities of licensed irrigators.

(b) ~~The commission may adopt standards for irrigation that include water conservation, irrigation system design and installation, and compliance with municipal codes.~~

~~(c)~~ The commission may not require or prohibit the use of any irrigation system, component part, or equipment of any particular brand or manufacturer.

(c) In adopting standards under this section, the commission shall consult the council.

SECTION 14. Section 151.355, Tax Code, is amended to read as follows:

Sec. 151.355. WATER-RELATED EXEMPTIONS. The following are exempted from taxes imposed by this chapter:

(1) rainwater harvesting equipment or supplies, water recycling and reuse equipment or supplies, or other equipment, services, or supplies used solely to reduce or eliminate water use;

(2) equipment, services, or supplies used solely for desalination of surface water or groundwater;

(3) equipment, services, or supplies used solely for brush control designed to enhance the availability of water;

(4) equipment, services, or supplies used solely for precipitation enhancement;

(5) equipment, services, or supplies used solely to construct or operate a water or wastewater system certified by the Texas Commission on Environmental Quality as a regional system; ~~and~~

(6) equipment, services, or supplies used solely to construct or operate a water supply or wastewater system by a private entity as a public-private partnership as certified by the political subdivision that is a party to the project; and

(7) tangible personal property specifically used to process, reuse, or recycle wastewater that will be used in fracturing work performed at an oil or gas well.

SECTION 15. The change in law made by this Act to Section 151.355, Tax Code, does not affect taxes imposed before the effective date of this Act, and the law in effect before the effective date of this Act is continued in effect for purposes of the liability for and collection of those taxes.

SECTION 16. As soon as practicable on or after the effective date of this Act, the Texas Water Development Board shall appoint the initial members of the Water Conservation Advisory Council, as required by Section 10.003, Water Code, as added by this Act. In making the initial appointments, the board shall designate seven members to serve terms expiring August 31, 2009, eight members to serve terms expiring August 31, 2011, and eight members to serve terms expiring August 31, 2013.

SECTION 17. Section 15.102(b), Water Code, as amended by this Act, applies only to an application for financial assistance filed with the Texas Water Development Board on or after the effective date of this Act. An application for financial assistance 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 18. Not later than January 1, 2008, the Texas Water Development Board and the Texas Commission on Environmental Quality jointly shall adopt rules as required by Section 16.402(e), Water Code, as added by this Act.

SECTION 19. Not later than June 1, 2008, the Texas Commission on Environmental Quality shall adopt standards as required by Section 1903.053, Occupations Code, as amended by this Act, to take effect January 1, 2009.

SECTION 20. (a) Except as provided by Subsection (b) of this section, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

(b) Section 10 of this Act takes effect September 1, 2009.

Representative Puente moved to adopt the conference committee report on **HB 4**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 4** prevailed by (Record 1957): 144 Yeas, 1 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; 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; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; 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; 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; Woolley; Zedler; Zerwas.

Nays — Christian.

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

Absent — Anchia; Pitts; West.

STATEMENT OF VOTE

When Record No. 1957 was taken, I was in the house but away from my desk. I would have voted yes.

Anchia

HB 3200 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Madden submitted the following conference committee report on **HB 3200**:

Austin, Texas, May 26, 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 3200** 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.

Whitmire

Deuell

Hegar

Hinojosa

Seliger

On the part of the senate

Madden

Haggerty

Hochberg

McReynolds

Zedler

On the part of the house

HB 3200, A bill to be entitled An Act relating to funding for community supervision and corrections departments.

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

SECTION 1. Section 509.011, Government Code, is amended by amending Subsections (a) and (e) and adding Subsections (i) and (j) to read as follows:

(a) If the division determines that a department complies with division standards and if the community justice council has submitted a community justice plan under Section 76.003 and the supporting information required by the division and the division determines the plan and supporting information are acceptable, the division shall prepare and submit to the comptroller vouchers for payment to the department as follows:

(1) for per capita funding, a per diem amount for:

(A) each felony defendant placed on community supervision and [directly] supervised by the department pursuant to lawful authority; and

(B) each felony defendant participating in a pretrial program and supervised by the department pursuant to lawful authority;

(2) for per capita funding, a per diem amount for a period not to exceed 182 days for each misdemeanor defendant placed on community supervision and supervised by the department pursuant to lawful authority[, other than a felony defendant]; and

(3) for formula funding, an annual amount as computed by multiplying a percentage determined by the allocation formula established under Subsection (f) times the total amount provided in the General Appropriations Act for payments under this subdivision.

(e) In establishing the per capita funding formula under Subsection (i) [per diem payments authorized by Subsections (a)(1) and (a)(2)], the division shall consider the amounts appropriated in the General Appropriations Act for basic supervision as sufficient to provide basic supervision in each year of the fiscal biennium.

(i) The division annually shall establish a per capita funding formula to determine the percentage of the total amount provided in the General Appropriations Act for payments to departments that each department is entitled to receive as per capita funding under Subsections (a)(1) and (2). With reference to funding distributed under Subsection (a)(1)(A), the formula must include:

(1) higher per capita rates for those felony defendants supervised by a department who are serving the early years of a term of community supervision than for those felony defendants who are serving the end of a term of community supervision;

(2) penalties in per capita funding with respect to each felony defendant supervised by a department whose community supervision is revoked due to a technical violation of an applicable condition of community supervision; and

(3) awards in per capita funding with respect to each felony defendant supervised by a department who is discharged following an early termination of community supervision under Section 5 or Section 20, Article 42.12, Code of Criminal Procedure, as applicable.

(j) The board by rule may adopt a policy limiting the percentage of benefit or loss a department may realize as a result of the operation of the per capita funding formula established under Subsection (i).

SECTION 2. Section 19, Article 42.12, Code of Criminal Procedure, is amended by amending Subsections (a) and (b) and adding Subsection (g) to read as follows:

(a) Except as otherwise provided by this subsection, a judge granting community supervision shall fix a fee of not less than \$25 and not more than \$60 per month to be paid during the period of community supervision by the defendant to the court of original jurisdiction or, in the case of an intrastate transfer described by Section 10(b) of this article, to the court to which jurisdiction of the defendant's case is transferred [by the defendant during the community supervision period]. The judge may make payment of the fee a

condition of granting or continuing the community supervision. The judge may waive or reduce the fee or suspend a monthly payment of the fee if the judge determines that payment of the fee would cause the defendant a significant financial hardship.

(b) A ~~The~~ judge shall deposit any fee ~~the fees~~ received under Subsection (a) of this section in the special fund of the county treasury, to be used for the same purposes for which state aid may be used under Chapter 76, Government Code.

(g) A court to which jurisdiction of a defendant's case is transferred under Section 10(b) of this article shall enter an order directing the defendant to pay the monthly fee described by Subsection (a) of this section to that court in lieu of paying the monthly fee to the court of original jurisdiction. To the extent of any conflict between an order issued under this subsection and an order issued by a court of original jurisdiction, the order entered under this subsection prevails.

SECTION 3. (a) Not later than January 1, 2008, the community justice assistance division of the Texas Department of Criminal Justice shall establish the per capita funding formula described by Section 509.011(i), Government Code, as added by this Act, that is to be used for the state fiscal year beginning September 1, 2008.

(b) Sections 509.011(a) and (e), Government Code, as amended by this Act, and Sections 509.011(i) and (j), Government Code, as added by this Act, apply to appropriations made for any state fiscal year beginning on or after September 1, 2008.

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.

Representative Madden moved to adopt the conference committee report on **HB 3200**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 3200** prevailed by (Record 1958): 141 Yeas, 3 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; 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; Geren; Giddings; Gonzales; Gonzalez Tourelles; Goolsby; Guillen; Haggerty; Hancock; Hardcastle; Harless; 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; Pickett; Pierson; Pitts; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

Nays — Christian; Harper-Brown; Phillips.

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

Absent — Farias; Hamilton; Puente; Smith, W.

HB 1137 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hochberg submitted the following conference committee report on **HB 1137**:

Austin, Texas, May 26, 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 1137** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Zaffirini
Watson
Eltife
Hegar
Shapiro

Hochberg
Branch
Eissler
Patrick

On the part of the senate

On the part of the house

HB 1137, A bill to be entitled An Act relating to eligibility and attendance requirements in public schools.

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

SECTION 1. Section 25.001, Education Code, is amended by amending Subsections (a) and (b) and adding Subsections (b-1) and (b-2) to read as follows:

(a) A person who, on the first day of September of any school year, is at least five years of age and under 21 years of age, or is at least 21 years of age and under 26 years of age and is admitted by a school district to complete the requirements for a high school diploma ~~[on the first day of September of any school year]~~ is entitled to the benefits of the available school fund for that year. Any other person enrolled in a prekindergarten class under Section 29.153 is entitled to the benefits of the available school fund.

(b) The board of trustees of a school district or its designee shall admit into the public schools of the district free of tuition a person who is over five and younger than 21 years of age on the first day of September of the school year in which admission is sought, and may admit a person who is at least 21 years of age and under 26 years of age for the purpose of completing the requirements for a high school diploma, if:

(1) the person and either parent of the person reside in the school district;

(2) the person does not reside in the school district but a parent of the person resides in the school district and that parent is a joint managing conservator or the sole managing conservator or possessory conservator of the person;

(3) the person and the person's guardian or other person having lawful control of the person under a court order reside within the school district;

(4) the person has established a separate residence under Subsection (d);

(5) the person is homeless, as defined by 42 U.S.C. Section 11302, regardless of the residence of the person, of either parent of the person, or of the person's guardian or other person having lawful control of the person;

(6) the person is a foreign exchange student placed with a host family that resides in the school district by a nationally recognized foreign exchange program, unless the school district has applied for and been granted a waiver by the commissioner under Subsection (e);

(7) the person resides at a residential facility located in the district;

(8) the person resides in the school district and is 18 years of age or older or the person's disabilities of minority have been removed; or

(9) the person does not reside in the school district but the grandparent of the person:

(A) resides in the school district; and

(B) provides a substantial amount of after-school care for the person as determined by the board.

(b-1) A person who is 21 years of age or older and is admitted by a school district for the purpose stated in Subsection (b) is not eligible for placement in a disciplinary alternative education program or a juvenile justice alternative education program if the person engages in conduct that would require or authorize such placement for a student under the age of 21. If the student engages in conduct that would otherwise require such placement, the district shall revoke admission of the student into the public schools of the district.

(b-2) A person who is 21 years of age or older who is admitted by a school district to complete the requirements for a high school diploma and who has not attended school in the three preceding school years may not be placed with a student who is 18 years of age or younger in a classroom setting, a cafeteria, or another district-sanctioned school activity. Nothing in this subsection prevents a student described by this subsection from attending a school-sponsored event that is open to the public as a member of the public.

SECTION 2. Section 25.085(f), Education Code, as added by **HB 566**, Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

(f) The board of trustees of a school district may adopt a policy requiring a person described by Subsection (e) who is under 21 years of age to attend school until the end of the school year. Section 25.094 applies to a person subject to a policy adopted under this subsection. Sections 25.093 and 25.095 do not apply to the parent of a person subject to a policy adopted under this subsection.

SECTION 3. Section 25.092, Education Code, is amended by adding Subsection (a-1) and amending Subsection (b) to read as follows:

(a-1) A student who is in attendance for at least 75 percent but less than 90 percent of the days a class is offered may be given credit for the class if the student completes a plan approved by the school's principal that provides for the student to meet the instructional requirements of the class. A student under the jurisdiction of a court in a criminal or juvenile justice proceeding may not receive credit under this subsection without the consent of the judge presiding over the student's case.

(b) The board of trustees of each school district shall appoint one or more attendance committees to hear petitions for class credit by students who are in attendance fewer than the number of days required under Subsection (a) and have not earned class credit under Subsection (a-1). Classroom teachers shall comprise a majority of the membership of the committee. A committee may give class credit to a student because of extenuating circumstances. Each board of trustees shall establish guidelines to determine what constitutes extenuating circumstances and shall adopt policies establishing alternative ways for students to make up work or regain credit lost because of absences. The alternative ways must include at least one option that does not require a student to pay a fee authorized under Section 11.158(a)(15). A certified public school employee may not be assigned additional instructional duties as a result of this section outside of the regular workday unless the employee is compensated for the duties at a reasonable rate of pay.

SECTION 4. Section 29.153(b), Education Code, is amended to read as follows:

(b) A child is eligible for enrollment in a prekindergarten class under this section if the child is at least three years of age and ~~is~~:

- (1) is unable to speak and comprehend the English language;
- (2) ~~is~~ educationally disadvantaged;
- (3) ~~is~~ a homeless child, as defined by 42 U.S.C. Section 11434a ~~[11302]~~, regardless of the residence of the child, of either parent of the child, or of the child's guardian or other person having lawful control of the child;

(4) is the child of an active duty member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, who is ordered to active duty by proper authority; ~~or~~

(5) is the child of a member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, who was injured or killed while serving on active duty; or

(6) is or ever has been in the conservatorship of the Department of Family and Protective Services following an adversary hearing held as provided by Section 262.201, Family Code.

SECTION 5. Section 42.003(a), Education Code, is amended to read as follows:

(a) A student is entitled to the benefits of the Foundation School Program if, on September 1 of the school year, the student is 5 years of age or older and under 21 years of age ~~[on September 1 of the school year]~~ and has not graduated

from high school, or is at least 21 years of age and under 26 years of age and has been admitted by a school district to complete the requirements for a high school diploma.

SECTION 6. This Act applies beginning with the 2007-2008 school year.

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 Hochberg moved to adopt the conference committee report on **HB 1137**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1137** prevailed by (Record 1959): 145 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; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; 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; Pitts; 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.

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

Absent — Farias; Pierson; Puente.

STATEMENT OF VOTE

When Record No. 1959 was taken, I was in the house but away from my desk. I would have voted yes.

Pierson

HB 1267 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Peña submitted the following conference committee report on **HB 1267**:

Austin, Texas, May 26, 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 1267** 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

Ellis

Hinojosa

Duncan

Harris

On the part of the senate

Peña

Escobar

Gattis

Hartnett

Talton

On the part of the house

HB 1267, A bill to be entitled An Act relating to appointment procedures concerning and compensation and reimbursement for counsel appointed to represent indigent defendants in certain criminal and post-conviction proceedings and to the creation of an indigent defense representation fund.

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

SECTION 1. Article 26.05, Code of Criminal Procedure, is amended by amending Subsection (c) and adding Subsection (i) to read as follows:

(c) Each fee schedule adopted shall state reasonable fixed rates or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and shall provide a form for the appointed counsel to itemize the types of services performed. No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings and the judge approves the payment. If the judge disapproves the requested amount of payment, the judge shall make written findings stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment or failure to act and determine the appropriate amount of payment. In reviewing the disapproval or failure to act, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county.

(i) The indigent defense representation fund is a separate account in the general revenue fund. The fund:

(1) consists of criminal fees collected under Section 133.107, Local Government Code; and

(2) may be used only for the purposes for which the fair defense account established under Section 71.058, Government Code, may be used, including compensating appointed counsel in accordance with this code.

SECTION 2. Article 26.051(a)(2), Code of Criminal Procedure, is amended to read as follows:

(2) "Correctional institutions [~~Institutional~~] division" means the correctional institutions [~~institutional~~] division of the Texas Department of Criminal Justice.

SECTION 3. Article 26.051, Code of Criminal Procedure, is amended by amending Subsections (d) and (h) and adding Subsection (i) to read as follows:

(d) A court shall:

(1) ~~may~~ notify the board if it determines that a defendant before the court is indigent and is an inmate charged with an offense committed while in the custody of the correctional institutions [~~institutional~~] division or a correctional facility authorized by Section 495.001, Government Code; and

(2) request that the board provide legal representation for the inmate.

(h) When the court appoints an attorney other than an attorney provided by the board:

(1) except as otherwise provided by this article, the inmate's legal defense is subject to Articles 1.051, 26.04, 26.05, and 26.052, as applicable; and

(2) the county in which a facility of the correctional institutions division or a correctional facility authorized by Section 495.001, Government Code, is located shall pay from its general fund the total costs of the aggregate amount allowed and awarded by the court for attorney compensation and expenses under Article 26.05 or 26.052, as applicable [~~the county shall pay from its general fund the first \$250.00 of the aggregate sum allowed and awarded by the court for the attorney fees under Article 26.05 of this code. If the fees awarded for a court appointed attorney in a case described by this subsection exceed \$250.00, the court shall certify the amount in excess of \$250.00 to the board. On request of the board, the comptroller shall issue a warrant to the court appointed attorney in the amount certified to the board by the court.~~].

(i) The state shall reimburse a county for attorney compensation and expenses awarded under Subsection (h). A court seeking reimbursement for a county shall certify to the comptroller of public accounts the amount of compensation and expenses for which the county is entitled to be reimbursed under this article. Not later than the 60th day after the date the comptroller receives from the court the request for reimbursement, the comptroller shall issue a warrant to the county in the amount certified by the court.

SECTION 4. Subchapter B, Chapter 102, Government Code, is amended by adding Section 102.023 to read as follows:

Sec. 102.023. COURT COST ON CONVICTION: SUPPORT OF INDIGENT DEFENSE REPRESENTATION. A person convicted of any offense, other than an offense relating to a pedestrian or the parking of a motor vehicle, shall pay a cost on conviction of \$2 under Section 133.107, Local Government Code.

SECTION 5. Section 133.003, Local Government Code, is amended to read as follows:

Sec. 133.003. CRIMINAL FEES. This chapter applies to the following criminal fees:

- (1) the consolidated fee imposed under Section 133.102;
- (2) the time payment fee imposed under Section 133.103;
- (3) fees for services of peace officers employed by the state imposed under Article 102.011, Code of Criminal Procedure, and forwarded to the comptroller as provided by Section 133.104;
- (4) costs on conviction imposed in certain statutory county courts under Section 51.702, Government Code, and deposited in the judicial fund;
- (5) costs on conviction imposed in certain county courts under Section 51.703, Government Code, and deposited in the judicial fund;
- (6) the administrative fee for failure to appear or failure to pay or satisfy a judgment imposed under Section 706.006, Transportation Code;
- (7) fines on conviction imposed under Section 621.506(g), Transportation Code;
- (8) the fee imposed under Article 102.0045, Code of Criminal Procedure; ~~and~~
- (9) the cost on conviction imposed under Section 133.105 and deposited in the judicial fund; and
- (10) the cost on conviction imposed under Section 133.107.

SECTION 6. Subchapter C, Chapter 133, Local Government Code, is amended by adding Section 133.107 to read as follows:

Sec. 133.107. FEE FOR SUPPORT OF INDIGENT DEFENSE REPRESENTATION. (a) A person convicted of any offense, other than an offense relating to a pedestrian or the parking of a motor vehicle, shall pay as a court cost, in addition to other costs, a fee of \$2 to be used to fund indigent defense representation through the fair defense account established under Section 71.058, Government Code.

(b) The treasurer shall remit a fee collected under this section to the comptroller in the manner provided by Subchapter B. The comptroller shall credit the remitted fees to the credit of the fair defense account established under Section 71.058, Government Code.

SECTION 7. Articles 26.051(b) and (c), Code of Criminal Procedure, and Article 26.055, Code of Criminal Procedure, are repealed.

SECTION 8. The change in law made by this Act to Article 26.05(c), Code of Criminal Procedure, applies only to a request for payment submitted under Article 26.05(c) on or after the effective date of this Act.

SECTION 9. The change in law made by this Act to Article 26.051, Code of Criminal Procedure, applies to compensation and expenses owed on or after the effective date of this Act to an attorney appointed under Article 26.051, Code of Criminal Procedure, regardless of whether the attorney was appointed before, on, or after the effective date of this Act.

SECTION 10. The imposition of a cost of court under Section 133.107, Local Government Code, as added by 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 when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 11. This Act takes effect September 1, 2007.

Representative Peña moved to adopt the conference committee report on **HB 1267**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1267** prevailed by (Record 1960): 139 Yeas, 8 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anderson; Bailey; Berman; Bohac; Bolton; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; 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; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; 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; 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; 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.

Nays — Aycock; Bonnen; Christian; Crabb; Harper-Brown; Macias; Miller; Phillips.

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

Absent — Anchia.

STATEMENT OF VOTE

I was shown voting yes on Record No. 1960. I intended to vote no.

B. Brown

SB 9 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Branch submitted the conference committee report on **SB 9**.

Representative Branch moved to adopt the conference committee report on **SB 9**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 9** prevailed by (Record 1961): 139 Yeas, 4 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; 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; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Giddings; Gonzales; Gonzalez Toureilles; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Heflin; Hernandez; Hilderbran; Hill; Hochberg; Hodge; Homer; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; 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; Phillips; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

Nays — Goolsby; Herrero; Hopson; Leibowitz.

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

Absent — Burnam; Deshotel; Geren; Peña; Straus.

SB 10 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Delisi submitted the conference committee report on **SB 10**.

Representative Delisi moved to adopt the conference committee report on **SB 10**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 10** prevailed by (Record 1962): 145 Yeas, 3 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; 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; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; 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; 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.

Nays — Christian; Harper-Brown; Phillips.

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

STATEMENTS OF VOTE

I was shown voting no on Record No. 1962. I intended to vote yes.

Christian

I was shown voting yes on Record No. 1962. I intended to vote no.

Laubenberg

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. 51).

PARLIAMENTARY INQUIRY

REPRESENTATIVE TALTON: Mr. Speaker, parliamentary inquiry.

CHAIR (Gattis in the chair): State your inquiry.

TALTON: If there is not a privileged resolution for a transition provision in a conference committee report, is that a sustainable point of order?

CHAIR: Sorry, Mr. Talton, we were distracted up here. Could you repeat your full question?

TALTON: Yes. If you look at page 4 of the side-by-side of **HB 109**.

CHAIR: If you hold up one second, we're getting a copy. Go ahead.

TALTON: And it says, on one side of the house version says no equivalent provision and in the senate version it says no equivalent provision, and then they put in Section 7 of the conference committee report they put—

CHAIR: Hold on, Representative Talton. They gave us the wrong thing. We're getting the side-by-side so we can follow along. Alright, go ahead.

TALTON: And so we got—it's not in either version, the house or the senate, and it's in the conference committee report, a transition provision.

CHAIR: And you are where? On page what?

TALTON: Page 4, article side-by-side. The section-by-section analysis is what it's called, the last page of the conference committee report.

CHAIR: Okay. Top of the page, is that what you're talking about?

TALTON: Bottom of the page, over on the right hand side where it says conference, and then it has Section 6, 7, and 8. Section 7 is the one that we're looking at. You look back to your left. The other two columns, it says no equivalent provision. I was under the impression, and correct me if I'm wrong, that's why my parliamentary inquiry is that if you have something new in the bill, that you have to do a privileged resolution? Is that not true?

CHAIR: Mr. Talton, it's hard to hear you.

TALTON: I'm sorry, is that better?

CHAIR: Yes, sir.

TALTON: Okay, I was under the impression that if you had something new in a bill, that you'd had to have a privileged resolution. Is that correct or not correct?

CHAIR: That principle is correct.

TALTON: Well, then we have bill equivalent provision, and then it shows a new provision in Section 7 of the conference committee report.

CHAIR: Mr. Talton, you may be correct, but we need to look at the bill, and if you have a point of order bring it down front and we'll address it.

TALTON: Okay.

REPRESENTATIVE VILLARREAL: Mr. Speaker.

CHAIR: For what purpose?

VILLARREAL: Parliamentary question.

CHAIR: State your inquiry.

VILLARREAL: Does the speaker's newly revealed absolute authority include not recognizing members on points of order?

CHAIR: Hold on one second. I apologize, we are in the middle of a point of order. I'll get back to you on that question.

VILLARREAL: Will you need me to ask it again, or is it properly perceived?

CHAIR: I think you can ask it again once we figure this out because we're in the middle of a point of order.

VILLARREAL: Mr. Speaker.

CHAIR: For what purpose?

VILLARREAL: Parliamentary inquiry.

CHAIR: State your inquiry.

VILLARREAL: Because of the newly realized absolute powers of the speaker, doesn't the chair, doesn't the speaker have the authority not to recognize a member raising a point of order?

CHAIR: That's not a proper parliamentary inquiry.

VILLARREAL: Does the speaker have the authority to not recognize a member raising a point of order?

CHAIR: We have already answered that question many, many times.

VILLARREAL: I'm sorry, I'm not, I'm sincerely asking the question. This is a specific question that I don't believe has been asked.

CHAIR: You need to read Rule 5, Section 24, and Rule 1, Section 9(b), and the commentary, and that answers your question.

VILLARREAL: But can you give me your interpretation on this particular event?

CHAIR: That has already been announced to the house.

VILLARREAL: Well, can you just say yes or no, and we can move on?

CHAIR: We need to move on.

VILLARREAL: So you won't answer?

CHAIR: Sir, that has already been answered.

REPRESENTATIVE LUCIO: Mr. Speaker.

CHAIR: For what purpose?

LUCIO: Parliamentary inquiry.

CHAIR: State your inquiry.

LUCIO: Having read the section that you just referred to, it is my understanding, and it has been clearly stated in the last several days that the speaker holds the sole discretion whether or not to recognize any member on any motion. Is that correct?

CHAIR: That's correct.

LUCIO: So therefore the speaker has the authority to not recognize a member who is going to call a point of order. Is that correct?

CHAIR: That's correct.

LUCIO: And no point or order to this point has officially been called on **HB 109**. Is that correct?

CHAIR: We're not advised on that.

LUCIO: Well, parliamentary inquiry.

CHAIR: State your inquiry.

LUCIO: Was the point of order called from the back mic during questioning between Representative Talton and the speaker?

CHAIR: A point of order is being considered right now.

LUCIO: Has it been raised?

CHAIR: It was raised at the front.

HR 2909 - ADOPTED
(by Hochberg)

The following privileged resolution was laid before the house:

HR 2909

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 828** (computation of certain amounts under the Foundation School Program) to consider and take action on the following matters:

(1) House Rule 13, Sections 9(a)(1) and (3), are suspended to add text to Section 42.2516(b), Education Code, to read as follows:

(b) Subject to Subsections (b-2), (f-1), (g), and (h), but notwithstanding any other provision of this title, a school district is entitled to state revenue necessary to provide the district with the sum of:

Explanation: This change is necessary to permit the adjustment of the additional state funding for property tax relief to which a school district is entitled under the Foundation School Program to reflect actions taken by the district regarding tax abatements and tax increment reinvestment zones.

(2) House Rule 13, Section 9(a)(4), is suspended to add Sections 42.2516(f-1), (f-2), and (f-3), Education Code, to read as follows:

(f-1) The commissioner shall, in accordance with rules adopted by the commissioner, adjust the amount of a school district's local revenue derived from maintenance and operations tax collections, as calculated for purposes of determining the amount of state revenue to which the district is entitled under this section, if the district, for the 2007 tax year or a subsequent tax year:

(1) adopts an exemption under Section 11.13(n), Tax Code, that was not in effect for the 2005 or 2006 tax year, or eliminates an exemption under Section 11.13(n), Tax Code, that was in effect for the 2005 or 2006 tax year;

(2) adopts an exemption under Section 11.13(n), Tax Code, at a greater or lesser percentage than the percentage in effect for the district for the 2005 or 2006 tax year;

(3) grants an exemption under an agreement authorized by Chapter 312, Tax Code, that was not in effect for the 2005 or 2006 tax year, or ceases to grant an exemption authorized by that chapter that was in effect for the 2005 or 2006 tax year; or

(4) agrees to deposit taxes into a tax increment fund created under Chapter 311, Tax Code, under a reinvestment zone financing plan that was not in effect for the 2005 or 2006 tax year, or ceases depositing taxes into a tax increment fund created under that chapter under a reinvestment zone financing plan that was in effect for the 2005 or 2006 tax year.

(f-2) The rules adopted by the commissioner under Subsection (f-1) must:

(1) require the commissioner to determine, as if this section did not exist, the effect under Chapter 41 and this chapter of a school district's action described by Subsection (f-1)(1), (2), (3), or (4) on the total state revenue to which the district would be entitled or the cost to the district of purchasing sufficient attendance credits to reduce the district's wealth per student to the equalized wealth level; and

(2) require an increase or reduction in the amount of state revenue to which a school district is entitled under Subsection (b) that is substantially equivalent to any change in total state revenue or the cost of purchasing attendance credits that would apply to the district if this section did not exist.

(f-3) An adjustment made by the commissioner under the rules adopted under Subsection (f-1) is final and may not be appealed.

Explanation: This change is necessary to permit the adjustment of the additional state funding for property tax relief to which a school district is entitled under the Foundation School Program to reflect actions taken by the district regarding tax abatements and tax increment reinvestment zones.

(3) House Rule 13, Section 9(a)(1), is suspended to add text to the introductory language in SECTION 2 of the conference committee report, amending Section 42.302(a-1), Education Code, to read as follows:

SECTION 2. Effective September 1, 2010, Section 42.302(a-1), Education Code, is amended to read as follows:

Explanation: This change is necessary to make the amendment to Section 42.302(a-1), Education Code, take effect September 1, 2010.

(4) House Rule 13, Section 9(a)(1), is suspended to add text to SECTION 3 of the conference committee report, containing the effective date of the bill, to read as follows:

SECTION 3. Except as otherwise provided by this Act, this Act takes effect September 1, 2007.

Explanation: This change is necessary to make the amendment to Section 42.302(a-1), Education Code, take effect September 1, 2010.

HR 2909 was adopted.

HB 828 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hochberg submitted the following conference committee report on **HB 828**:

Austin, Texas, May 26, 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 828** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Shapiro
Carona
Nelson
Shapleigh
Williams

On the part of the senate

Hochberg
Branch
Eissler
Patrick

On the part of the house

HB 828, A bill to be entitled An Act relating to the computation of certain amounts under the Foundation School Program.

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

SECTION 1. Section 42.2516, Education Code, is amended by amending Subsection (b) and adding Subsections (b-2), (f-1), (f-2), and (f-3) to read as follows:

(b) Subject to Subsections (b-2), (f-1), (g), and (h), but notwithstanding any other provision of this title, a school district is entitled to state revenue necessary to provide the district with the sum of:

(1) the amount of state revenue necessary to maintain state and local revenue per student in weighted average daily attendance in the amount equal to the greater of:

(A) the amount of state and local revenue per student in weighted average daily attendance for the maintenance and operations of the district available to the district for the 2005-2006 school year;

(B) the amount of state and local revenue per student in weighted average daily attendance for the maintenance and operations of the district to which the district would have been entitled for the 2006-2007 school year under this chapter, as it existed on January 1, 2006, or, if the district would have been subject to Chapter 41, as that chapter existed on January 1, 2006, the amount to which the district would have been entitled under that chapter, based on the funding elements in effect for the 2005-2006 school year, if the district imposed a maintenance and operations tax at the rate adopted by the district for the 2005 tax year; or

(C) the amount of state and local revenue per student in weighted average daily attendance for the maintenance and operations of the district to which the district would have been entitled for the 2006-2007 school year under this chapter, as it existed on January 1, 2006, or, if the district would have been subject to Chapter 41, as that chapter existed on January 1, 2006, the amount to which the district would have been entitled under that chapter, based on the funding elements in effect for the 2005-2006 school year, if the district imposed a maintenance and operations tax at the rate equal to the rate described by Section 26.08(i) or (k)(1), Tax Code, as applicable, for the 2006 tax year;

(2) an amount equal to the product of \$2,500 multiplied by the number of classroom teachers, full-time librarians, full-time counselors certified under Subchapter B, Chapter 21, and full-time school nurses employed by the district and entitled to a minimum salary under Section 21.402; and

(3) an amount equal to the product of \$275 multiplied by the number of students in average daily attendance in grades nine through 12 in the district.

(b-2) The amount determined for a school district under Subsection (b) is increased or reduced as follows:

(1) if for any school year the district is entitled to a greater allotment under Section 42.155 or greater additional state aid under Section 42.2515 than the allotment or additional state aid to which the district was entitled under Section 42.155 or 42.2515, as applicable, for the school year on which the district's entitlement under Subsection (b) is based, the district's entitlement

under Subsection (b) is increased by an amount equal to the difference between the amount to which the district is entitled under Section 42.155 or 42.2515, as applicable, for that school year and the amount to which the district was entitled under the applicable section, as applicable for:

(A) the 2005-2006 school year, if the amount determined for the district under Subsection (b) is determined under Subsection (b)(1)(A); or

(B) the 2006-2007 school year, if the amount determined for the district under Subsection (b) is determined under Subsection (b)(1)(B) or (C); and

(2) if for any school year the district is not entitled to an allotment under Section 42.155 or additional state aid under Section 42.2515 or is entitled to a lesser allotment or less additional state aid under the applicable section than the allotment or additional state aid to which the district was entitled under the applicable section for the school year on which the district's entitlement under Subsection (b) is based, the district's entitlement under Subsection (b) is reduced by an amount equal to the difference between the amount to which the district was entitled under Section 42.155 or 42.2515, as applicable, for the 2005-2006 or 2006-2007 school year, as appropriate based on whether the district's entitlement under Subsection (b) is determined under Subsection (b)(1)(A), (B), or (C), and the amount to which the district is entitled under the applicable section for the current school year.

(f-1) The commissioner shall, in accordance with rules adopted by the commissioner, adjust the amount of a school district's local revenue derived from maintenance and operations tax collections, as calculated for purposes of determining the amount of state revenue to which the district is entitled under this section, if the district, for the 2007 tax year or a subsequent tax year:

(1) adopts an exemption under Section 11.13(n), Tax Code, that was not in effect for the 2005 or 2006 tax year, or eliminates an exemption under Section 11.13(n), Tax Code, that was in effect for the 2005 or 2006 tax year;

(2) adopts an exemption under Section 11.13(n), Tax Code, at a greater or lesser percentage than the percentage in effect for the district for the 2005 or 2006 tax year;

(3) grants an exemption under an agreement authorized by Chapter 312, Tax Code, that was not in effect for the 2005 or 2006 tax year, or ceases to grant an exemption authorized by that chapter that was in effect for the 2005 or 2006 tax year; or

(4) agrees to deposit taxes into a tax increment fund created under Chapter 311, Tax Code, under a reinvestment zone financing plan that was not in effect for the 2005 or 2006 tax year, or ceases depositing taxes into a tax increment fund created under that chapter under a reinvestment zone financing plan that was in effect for the 2005 or 2006 tax year.

(f-2) The rules adopted by the commissioner under Subsection (f-1) must:

(1) require the commissioner to determine, as if this section did not exist, the effect under Chapter 41 and this chapter of a school district's action described by Subsection (f-1)(1), (2), (3), or (4) on the total state revenue to

which the district would be entitled or the cost to the district of purchasing sufficient attendance credits to reduce the district's wealth per student to the equalized wealth level; and

(2) require an increase or reduction in the amount of state revenue to which a school district is entitled under Subsection (b) that is substantially equivalent to any change in total state revenue or the cost of purchasing attendance credits that would apply to the district if this section did not exist.

(f-3) An adjustment made by the commissioner under the rules adopted under Subsection (f-1) is final and may not be appealed.

SECTION 2. Effective September 1, 2010, Section 42.302(a-1), Education Code, is amended to read as follows:

(a-1) In this section, "wealth per student" has the meaning assigned by Section 41.001. For purposes of Subsection (a), the dollar amount guaranteed level of state and local funds per weighted student per cent of tax effort ("GL") for a school district is:

(1) the amount of district tax revenue per weighted student per cent of tax effort available to a district at the 88th percentile in wealth per student, as determined by the commissioner in cooperation with the Legislative Budget Board, for the district's maintenance and operations tax effort equal to or less than the rate equal to the product of the state compression percentage, as determined under Section 42.2516, multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year;

(2) the greater of the amount of district tax revenue per weighted student per cent of tax effort available to the Austin Independent School District, as determined by the commissioner in cooperation with the Legislative Budget Board, or the amount of district tax revenue per weighted student per cent of tax effort used for purposes of this subdivision in the preceding school year, for the first six cents by which the district's maintenance and operations tax rate exceeds the rate equal to the product of the state compression percentage, as determined under Section 42.2516 ~~[and notwithstanding the limitation on district enrichment tax rate ("DTR") under Section 42.303]~~, multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year; and

(3) \$31.95, for the district's maintenance and operations tax effort that exceeds the amount of tax effort described by Subdivision (2).

SECTION 3. Except as otherwise provided by this Act, this Act takes effect September 1, 2007.

Representative Hochberg moved to adopt the conference committee report on **HB 828**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 828** prevailed by (Record 1963): 146 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; 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; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; 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; Zedler; Zerwas.

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

Absent — Cohen; Woolley.

HR 2871 - ADOPTED
(by Hilderbran)

The following privileged resolution was laid before the house:

HR 2871

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 892** (the timely deposit of county funds received by the county treasurer) to consider and take action on the following matter:

House Rule 13, Section 9(a)(2), is suspended to permit the committee to omit:

(1) amended Sections 116.021(a) and (b), 116.022(a), 116.023(a), 116.024(a), 117.021(a) and (c), 117.023(a), and 117.025(b), Local Government Code; and

(2) the repeal of Sections 116.021(c) and 117.021(d), Local Government Code.

Explanation: These changes are necessary to require a county treasurer to deposit funds received from another county officer in the county depository in accordance with Section 116.013(a), Local Government Code, not later than the seventh business day after receiving the funds, without amending other provisions relating to depositories of county funds and registry funds.

HR 2871 was adopted.

HB 892 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hilderbran submitted the following conference committee report on **HB 892**:

Austin, Texas, May 24, 2007

Hardcastle; Harless; 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.

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

Absent — Farrar.

HB 1111 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Turner submitted the following conference committee report on **HB 1111**:

Austin, Texas, May 26, 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 1111** 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

Turner

Deuell

Dutton

Hegar

Madden

Hinojosa

On the part of the senate

On the part of the house

HB 1111, A bill to be entitled An Act relating to reporting concerning research on children committed to the Texas Youth Commission.

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

SECTION 1. Subchapter E, Chapter 61, Human Resources Code, is amended by adding Section 61.0763 to read as follows:

Sec. 61.0763. REPORTING CONCERNING RESEARCH PROGRAMS OR STUDIES. (a) The commission shall keep records relating to children committed to it that participate in research programs or studies.

(b) The records must show, for each calendar quarter and for each calendar year:

(1) the number of children participating in research programs or studies for the appropriate reporting period;

(2) the type of research program or study in which each child is participating;

(3) the name of the principal investigator conducting the research program or study; and

(4) the entity sponsoring the research program or study.

(c) The commission shall submit a report that contains the information in the records kept under Subsection (b) on or before the 15th day after the last day of the appropriate reporting period to the:

(1) governor;

(2) lieutenant governor;

(3) speaker of the house of representatives; and

(4) members of the legislature.

(d) A report submitted under this section is public information under Chapter 552, Government Code.

SECTION 2. This Act applies to a child committed to the Texas Youth Commission without regard to whether the child was committed before, on, or after the effective date of this Act.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

Representative Turner moved to adopt the conference committee report on **HB 1111**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1111** prevailed by (Record 1965): 147 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; Geren; Giddings; Gonzales; Gonzalez Tourelles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; 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; Thompson; Truitt; Turner; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent — Merritt.

SB 1879 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE ZERWAS: Thank you Representative Hamilton, and thank you Senator Williams for pushing this forward in terms of addressing what really is an important issue. There's a couple of things, and you and I have talked about this a little bit, that I would like to just establish and get recorded into the record. The intent of this bill, as it's read literally, could find a physician or a nurse practitioner or a physician assistant who failed to report the patient's age or date of birth on the prescription, is that correct?

REPRESENTATIVE HAMILTON: That's correct.

ZERWAS: And the anticipated fine for failure to actually put that on the prescription would be what?

HAMILTON: It would be up to \$1,000.

ZERWAS: If the pharmacist has the date of birth recorded in the pharmacy's prescription record, yet the age and date of birth is not on the actual prescription that the doctor writes, would that cost of action against the physician—

HAMILTON: No.

ZERWAS: No it would not—so what we're saying is having it recorded in the pharmacy record would suffice as opposed to it being on the actual prescription?

HAMILTON: Yes, sir.

ZERWAS: Is it your opinion then, based on this bill, that information related to the age and date of birth should be on the prescription label?

HAMILTON: Right. Yes, sir.

ZERWAS: Does the bill give the DPS the right to supercede the Texas Pharmacy Board and enforcing the provisions of the Pharmacy Act?

HAMILTON: No, not at all.

ZERWAS: And when the licensing board fines licensees for violations, those fines accrue to the state's general revenue, is that your understanding also?

HAMILTON: That is correct. One of the amendments was the Isett amendment that changed the direction from the funds going from DPS to the general fund.

REMARKS ORDERED PRINTED

Representative Zerwas moved to print remarks between Representative Hamilton and Representative Zerwas.

The motion prevailed.

**HB 772 - HOUSE DISCHARGES CONFEREES
HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 772, A bill to be entitled An Act relating to social studies conducted in certain suits affecting the parent-child relationship.

Representative Dutton moved to discharge the conferees and concur in the senate amendments to **HB 772**.

A record vote was requested.

The motion prevailed by (Record 1966): 146 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; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Harless; 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; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent — Hardcastle; Veasey.

Senate Committee Substitute

CSHB 772, A bill to be entitled An Act relating to suits affecting the parent-child relationship, including the powers and duties of domestic relations offices and the conducting of social studies.

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

SECTION 1. Subchapter D, Chapter 107, Family Code, is amended by adding Section 107.0501 to read as follows:

Sec. 107.0501. DEFINITIONS. In this subchapter:

(1) "Social study" means an evaluative process through which information and recommendations regarding adoption of a child, conservatorship of a child, or possession of or access to a child may be made to a court, the

parties, and the parties' attorneys. The term does not include services provided in accordance with the Interstate Compact on the Placement of Children adopted under Subchapter B, Chapter 162, or an evaluation conducted in accordance with Section 262.114 by an employee of or contractor with the Department of Family and Protective Services.

(2) "Social study evaluator" means an individual who conducts a social study under this subchapter.

SECTION 2. Section 107.051, Family Code, is amended to read as follows:

Sec. 107.051. ORDER FOR SOCIAL STUDY. (a) The court may order the preparation of a social study into the circumstances and condition of:

(1) a ~~the~~ child who is the subject of a suit or a party to a suit; and

(2) ~~of~~ the home of any person requesting ~~managing~~ conservatorship of, ~~or~~ possession of, or access to a ~~the~~ child.

(b) The social study may be made by a private entity, a person appointed by the court, a domestic relations office, or a state agency, including the Department of Family and Protective ~~and Regulatory~~ Services if the department is a party to the suit.

(c) In a suit in which adoption is requested or conservatorship of, possession of, or access to a ~~the~~ child is an issue and in which a social study has been ordered and the Department of Family and Protective ~~and Regulatory~~ Services is not a party, the court shall appoint a private agency, ~~or~~ another person, or ~~including~~ a domestic relations office~~;~~ to conduct the social study.

(d) Except as provided by Section 107.0511(b), each individual who conducts a social study must be qualified under Section 107.0511.

SECTION 3. Subchapter D, Chapter 107, Family Code, is amended by amending Section 107.0511 and adding Sections 107.0512, 107.0513, 107.0514, 107.0515, and 107.0519 to read as follows:

Sec. 107.0511. SOCIAL STUDY EVALUATOR: MINIMUM QUALIFICATIONS. (a) In this section:

(1) "Full-time experience" means a period during which an individual works at least 30 hours per week.

(2) "Human services field of study" means a field of study designed to prepare an individual in the disciplined application of counseling, family therapy, psychology, or social work values, principles, and methods.

(b) The minimum qualifications prescribed by this section do not apply to an individual conducting a social study:

(1) in connection with a suit pending before a court located in a county with a population of less than 500,000;

(2) in connection with an adoption governed by rules adopted under Section 107.0519(a);

(3) as an employee or other authorized representative of a licensed child-placing agency; or

(4) as an employee or other authorized representative of the Department of Family and Protective Services.

(c) The executive commissioner of the Health and Human Services Commission shall adopt rules prescribing the minimum qualifications that an individual described by Subsection (b)(3) or (4) must possess in order to conduct a social study under this subchapter.

(d) To be qualified to conduct a social study under this subchapter, an individual must:

(1) have a bachelor's degree from an accredited college or university in a human services field of study and a license to practice in this state as a social worker, professional counselor, marriage and family therapist, or psychologist and:

(A) have two years of full-time experience or equivalent part-time experience under professional supervision during which the individual performed functions involving the evaluation of physical, intellectual, social, and psychological functioning and needs and the potential of the social and physical environment, both present and prospective, to meet those needs; and

(B) have participated in the performance of at least 10 court-ordered social studies under the supervision of an individual qualified under this section;

(2) meet the requirements of Subdivision (1)(A) and be practicing under the direct supervision of an individual qualified under this section in order to complete at least 10 court-ordered social studies under supervision; or

(3) be employed by a domestic relations office, provided that the individual conducts social studies relating only to families ordered by a court to participate in social studies conducted by the office.

(e) If an individual meeting the requirements of this section is not available in the county served by the court, the court may authorize an individual determined by the court to be otherwise qualified to conduct the social study.

(f) In addition to the qualifications prescribed by this section, an individual must complete at least eight hours of family violence dynamics training provided by a family violence service provider to be qualified to conduct a social study under this subchapter.

Sec. 107.0512. SOCIAL STUDY EVALUATOR: CONFLICTS OF INTEREST AND BIAS. (a) A social study evaluator who has a conflict of interest with any party in a disputed suit or who may be biased on the basis of previous knowledge, other than knowledge obtained in a court-ordered evaluation, shall:

(1) decline to conduct a social study for the suit; or

(2) disclose any issue or concern to the court before accepting the appointment or assignment.

(b) A social study evaluator who has previously conducted a social study for a suit may conduct all subsequent evaluations in the suit unless the court finds that the evaluator is biased.

(c) This section does not prohibit a court from appointing an employee of the Department of Family and Protective Services to conduct a social study in a suit in which adoption is requested or possession of or access to a child is an issue and in which the department is a party or has an interest.

Sec. 107.0513. GENERAL PROVISIONS APPLICABLE TO CONDUCT OF SOCIAL STUDY AND PREPARATION OF REPORT. (a) Unless otherwise directed by a court or prescribed by a provision of this title, a social study evaluator's actions in conducting a social study shall be in conformance with the professional standard of care applicable to the evaluator's licensure and any administrative rules, ethical standards, or guidelines adopted by the state agency that licenses the evaluator.

(b) In addition to the requirements prescribed by this subchapter, a court may impose requirements or adopt local rules applicable to a social study or a social study evaluator.

(c) A social study evaluator shall follow evidence-based practice methods and make use of current best evidence in making assessments and recommendations.

(d) A social study evaluator shall disclose to each attorney of record any communication regarding a substantive issue between the evaluator and an attorney of record representing a party in a disputed suit. This subsection does not apply to a communication between a social study evaluator and an attorney ad litem or amicus attorney.

(e) To the extent possible, a social study evaluator shall verify each statement of fact pertinent to a social study and shall note the sources of verification and information in the report.

(f) A social study evaluator shall state the basis for the evaluator's conclusions or recommendations in the report. A social study evaluator who has evaluated only one side of a disputed case shall refrain from making a recommendation regarding conservatorship of a child or possession of or access to a child, but may state whether the party evaluated appears to be suitable for conservatorship.

(g) Each social study subject to this subchapter must be conducted in compliance with this subchapter, regardless of whether the study is conducted:

(1) by a single social study evaluator or multiple evaluators working separately or together; or

(2) within a county served by the court with continuing jurisdiction or at a geographically distant location.

(h) A social study report must include the name, license number, and basis for qualification under Section 107.0511 of each social study evaluator who conducted any portion of the social study.

Sec. 107.0514. ELEMENTS OF SOCIAL STUDY. (a) The basic elements of a social study under this subchapter consist of:

(1) a personal interview of each party to the suit;

(2) an interview, conducted in a developmentally appropriate manner, of each child at issue in the suit who is at least four years of age;

(3) observation of each child at issue in the suit, regardless of the age of the child;

(4) the obtaining of information from relevant collateral sources;

(5) evaluation of the home environment of each party seeking conservatorship of a child at issue in the suit or possession of or access to the child, unless the condition of the home environment is identified as not being in dispute in the court order requiring the social study;

(6) for each individual residing in a residence subject to the social study, consideration of any criminal history information and any contact with the Department of Family and Protective Services or a law enforcement agency regarding abuse or neglect; and

(7) assessment of the relationship between each child at issue in the suit and each party seeking possession of or access to the child.

(b) The additional elements of a social study under this subchapter consist of:

(1) balanced interviews and observation of each child at issue in the suit so that a child who is interviewed or observed while in the care of one party to the suit is also interviewed or observed while in the care of each other party to the suit;

(2) an interview of each individual residing in a residence subject to the social study; and

(3) evaluation of the home environment of each party seeking conservatorship of a child at issue in the suit or possession of or access to the child, regardless of whether the home environment is in dispute.

(c) A social study evaluator may not offer an opinion regarding conservatorship of a child at issue in a suit or possession of or access to the child unless each basic element of a social study under Subsection (a) has been completed. A social study evaluator shall identify in the report any additional element of a social study under Subsection (b) that was not completed and shall explain the reasons that the element was not completed.

Sec. 107.0515. REPORTS OF CERTAIN PLACEMENTS FOR ADOPTION. A social study evaluator shall report to the Department of Family and Protective Services any adoptive placement that appears to have been made by someone other than a licensed child-placing agency or the child's parents or managing conservator.

Sec. 107.0519. PRE-ADOPTIVE SOCIAL STUDY [~~HOME SCREENING~~]. (a) This section does not apply to a study prepared by a licensed child-placing agency or the Department of Family and Protective Services. The procedures required in relation to a study prepared by a licensed child-placing agency or the Department of Family and Protective Services are governed by rules adopted by the executive commissioner of the Health and Human Services Commission, including rules adopted under Chapter 42, Human Resources Code [~~In this section, "department" means the Department of Protective and Regulatory Services~~].

(b) A pre-adoptive social study [~~home screening~~] shall be conducted as provided by this section to evaluate each party in a proceeding described by Subsection (c) who requests termination of the parent-child relationship or an adoption.

(c) The social study [~~Except for a suit brought by a licensed child placing agency or the department, the home screening~~] under this section shall be filed in any suit for:

(1) termination of the parent-child relationship in which a person other than a parent may be appointed managing conservator of a child; or

(2) an adoption.

(d) The social study [~~Other than in a suit in which a licensed child placing agency or the department is appointed managing conservator of the child, the home screening~~] under this section must be filed with the court before the court may sign the final order for termination of the parent-child relationship.

(e) The costs of a social study [~~home screening~~] in a suit for adoption under this section shall be paid by the prospective adoptive parent.

(f) Unless otherwise agreed to by the court, the social study [~~home screening~~] under this section must comply with the minimum requirements for the study [~~screening~~] under rules adopted by the executive commissioner of the Health and Human Services Commission [~~Board of Protective and Regulatory Services~~].

(g) In a suit filed after the child begins residence in the prospective adoptive home [~~stepparent adoption~~], the pre-adoptive social study [~~home screening~~] under this section and the post-placement adoptive social study [~~report~~] under Section 107.052 may be combined in a single report. Under this subsection, the pre-adoptive social study will be completed after the child is placed in the home.

SECTION 4. Section 107.052, Family Code, is amended to read as follows:

Sec. 107.052. POST-PLACEMENT ADOPTIVE SOCIAL STUDY AND REPORT. (a) In a proceeding in which a pre-adoptive social study [~~home screening~~] is required by Section 107.0519 [~~107.0511~~] for an adoption, a post-placement adoptive social study [~~report~~] must be conducted and a report filed with the court before the court may render a final order in the adoption.

(b) Unless otherwise agreed to by the court, the post-placement adoptive social study [~~report~~] must comply with the minimum requirements for the study [~~report~~] under rules adopted by the executive commissioner of the Health and Human Services Commission [~~Board of Protective and Regulatory Services~~].

SECTION 5. Section 107.056, Family Code, is amended to read as follows:

Sec. 107.056. PREPARATION FEE. If the court orders a social study to be conducted [~~and a report to be prepared~~], the court shall award the agency or other person a reasonable fee for the preparation of the study that shall be imposed in the form of a money judgment [~~taxed as costs~~] and paid directly to the agency or other person. The person or agency may enforce the judgment [~~order~~] for the fee by any means available under law for civil judgments.

SECTION 6. Section 162.003, Family Code, is amended to read as follows:

Sec. 162.003. PRE-ADOPTIVE [~~HOME SCREENING~~] AND POST-PLACEMENT SOCIAL STUDIES [~~REPORT~~]. In a suit for adoption, [~~a~~] pre-adoptive [~~home screening~~] and post-placement social studies [~~report~~] must be conducted as provided in Chapter 107.

SECTION 7. Section 203.004(a), Family Code, is amended to read as follows:

(a) A domestic relations office may:

(1) collect and disburse child support payments that are ordered by a court to be paid through a domestic relations registry;

(2) maintain records of payments and disbursements made under Subdivision (1);

(3) file a suit, including a suit to:

(A) establish paternity;

(B) enforce a court order for child support or for possession of and access to a child; and

(C) modify or clarify an existing child support order;

(4) provide an informal forum in which alternative dispute resolution [~~(A) mediation~~]

is used to resolve disputes [~~in an action~~] under this code [Subdivision (3)]; or

[~~(B) an agreed repayment schedule for delinquent child support is negotiated as an alternative to filing a suit to enforce a court order for child support under Subdivision (3)~~];

(5) prepare a court-ordered social study under Chapter 107;

(6) represent a child as an amicus attorney, an attorney ad litem, or a guardian ad litem in a suit in which:

(A) termination of the parent-child relationship is sought; or

(B) conservatorship of or access to a child is contested;

(7) serve as a friend of the court;

(8) provide predivorce counseling ordered by a court;

(9) provide community supervision services under Chapter 157;

(10) provide information to assist a party in understanding, complying with, or enforcing the party's duties and obligations under Subdivision (3);

(11) provide, directly or through a contract, visitation services, including supervision of court-ordered visitation, visitation exchange, or other similar services; [~~and~~]

(12) issue an administrative writ of withholding under Subchapter F, Chapter 158; and

(13) provide parenting coordinator services under Chapter 153.

SECTION 8. Section 203.005(a), Family Code, is amended to read as follows:

(a) The administering entity may authorize a domestic relations office to assess and collect:

(1) an initial operations fee not to exceed \$15 to be paid to the domestic relations office on the filing of a suit;

(2) in a county that has a child support enforcement cooperative agreement with the Title IV-D agency, an initial child support service fee not to exceed \$36 to be paid to the domestic relations office on the filing of a suit;

(3) a reasonable application fee to be paid by an applicant requesting services from the office;

(4) a reasonable attorney's fee and court costs incurred or ordered by the court;

(5) a monthly service fee not to exceed \$3 to be paid annually in advance by a managing conservator and possessory conservator for whom the domestic relations office provides child support services;

(6) community supervision fees as provided by Chapter 157 if community supervision officers are employed by the domestic relations office;

(7) a reasonable fee for preparation of a court-ordered social study;

(8) in a county that provides visitation services under Sections 153.014 and 203.004 a reasonable fee to be paid to the domestic relations office at the time the visitation services are provided; ~~and~~

(9) a fee to reimburse the domestic relations office for a fee required to be paid under Section 158.503(d) for filing an administrative writ of withholding;

(10) a reasonable fee for parenting coordinator services; and

(11) a reasonable fee for alternative dispute resolution services.

SECTION 9. Sections 203.007(a) and (b), Family Code, are amended to read as follows:

(a) A domestic relations office may obtain the records described by Subsections (b), (c), (d), and (e) that relate to a person who has:

(1) been ordered to pay child support;

(2) been designated as a ~~[possessory]~~ conservator ~~[or managing conservator]~~ of a child;

(3) been designated to be the father of a child; ~~[or]~~

(4) executed an acknowledgment of paternity;

(5) court-ordered possession of a child; or

(6) filed suit to adopt a child.

(b) A domestic relations office is entitled to obtain from the Department of Public Safety records that relate to:

(1) a person's date of birth;

(2) a person's most recent address;

(3) a person's current driver's license status;

(4) motor vehicle accidents involving a person; ~~and~~

(5) reported traffic-law violations of which a person has been convicted; and

(6) a person's criminal history record information.

SECTION 10. Section 411.1285(a), Government Code, is amended to read as follows:

(a) A domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the department criminal history record information that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under Chapter 203, Family Code ~~[has been:~~

~~](1) appointed guardian ad litem for a child; or~~

~~](2) ordered to conduct a social study under Subchapter D, Chapter 107, Family Code].~~

SECTION 11. Notwithstanding Section 107.0511(d)(1)(B), Family Code, as added by this Act, an individual who on or before the effective date of this Act completed at least 10 social studies ordered by a court in suits affecting the

parent-child relationship is not required to comply with the supervision requirements imposed by that paragraph to be qualified to conduct a social study under Subchapter D, Chapter 107, Family Code, as amended by this Act.

SECTION 12. The changes in law made by this Act to Subchapter D, Chapter 107, Family Code, and Section 162.003, Family Code, apply to a suit affecting the parent-child relationship that is filed on or after the effective date of this Act. A suit affecting the parent-child relationship filed before the effective date of this Act is governed by the law in effect on the date the suit is filed, and the former law is continued in effect for that purpose.

SECTION 13. This Act takes effect September 1, 2007.

HR 2912 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 2912**, suspending the limitations on the conferees for **HB 12**.

(Speaker in the chair)

HB 109 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Turner submitted the following conference committee report on **HB 109**:

Austin, Texas, May 26, 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 109** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Averitt
Deuell
Hinojosa

Turner
Hughes
S. King
Dukes
J. Davis

On the part of the senate

On the part of the house

HB 109, A bill to be entitled An Act relating to eligibility for and information regarding the child health plan program.

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

SECTION 1. Section 62.002(4), Health and Safety Code, is amended to read as follows:

(4) "Net [~~Gross~~] family income" means the [~~total~~] amount of income established for a family after reduction for offsets for child care expenses, in accordance with standards applicable under the Medicaid [~~without consideration of any reduction for offsets that may be available to the family under any other~~] program.

SECTION 2. Subchapter B, Chapter 62, Health and Safety Code, is amended by adding Section 62.056 to read as follows:

Sec. 62.056. COMMUNITY OUTREACH CAMPAIGN; TOLL-FREE HOTLINE. (a) The commission shall conduct a community outreach and education campaign to provide information relating to the availability of health benefits for children under this chapter. The commission shall conduct the campaign in a manner that promotes enrollment in, and minimizes duplication of effort among, all state-administered child health programs.

(b) The community outreach campaign must include:

- (1) outreach efforts that involve school-based health clinics;
- (2) a toll-free telephone number through which families may obtain information about health benefits coverage for children; and
- (3) information regarding the importance of each conservator of a child promptly informing the other conservator of the child about the child's health benefits coverage.

(c) The commission shall contract with community-based organizations or coalitions of community-based organizations to implement the community outreach campaign and shall also promote and encourage voluntary efforts to implement the community outreach campaign. The commission shall procure the contracts through a process designed by the commission to encourage broad participation of organizations, including organizations that target population groups with high levels of uninsured children.

(d) The commission may direct that the Department of State Health Services perform all or part of the community outreach campaign.

(e) The commission shall ensure that information provided under this section is available in both English and Spanish.

SECTION 3. Section 62.101, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) The commission shall establish income eligibility levels consistent with Title XXI, Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any other applicable law or regulations, and subject to the availability of appropriated money, so that a child who is younger than 19 years of age and whose net ~~gross~~ family income is at or below 200 percent of the federal poverty level is eligible for health benefits coverage under the program. In addition, the commission may establish eligibility standards regarding the amount and types of allowable assets for a family whose net ~~gross~~ family income is above 150 percent of the federal poverty level.

(b-1) The eligibility standards adopted under Subsection (b) related to allowable assets:

- (1) must allow a family to own at least \$10,000 in allowable assets; and
- (2) may not in calculating the amount of allowable assets under Subdivision (1) consider:

(A) the value of one vehicle that qualifies for an exemption under commission rule based on its use;

(B) the value of a second or subsequent vehicle that qualifies for an exemption under commission rule based on its use if:

(i) the vehicle is worth \$18,000 or less; or
(ii) the vehicle has been modified to provide transportation for a household member with a disability;

(C) if no vehicle qualifies for an exemption based on its use under commission rule, the first \$18,000 of value of the highest valued vehicle; or

(D) the first \$7,500 of value of any vehicle not described by Paragraph (A), (B), or (C).

SECTION 4. Subchapter C, Chapter 62, Health and Safety Code, is amended by adding Section 62.1011 to read as follows:

Sec. 62.1011. VERIFICATION OF INCOME. The commission shall continue employing methods of verifying the net income of the individuals considered in the calculation of an applicant's net family income. The commission shall verify income under this section unless the applicant reports a net family income that exceeds the income eligibility level established under Section 62.101(b).

SECTION 5. Section 62.102, Health and Safety Code, is amended to read as follows:

Sec. 62.102. CONTINUOUS COVERAGE. (a) Subject to a review under Subsection (b), the [The] commission shall provide that an individual who is determined to be eligible for coverage under the child health plan remains eligible for those benefits until the earlier of:

(1) the end of a period not to exceed 12 months, beginning the first day of the month [~~the six month period~~] following the date of the eligibility determination; or

(2) the individual's 19th birthday.

(b) During the sixth month following the date of initial enrollment or reenrollment of an individual whose net family income exceeds 185 percent of the federal poverty level, the commission shall:

(1) review the individual's net family income and may use electronic technology if available and appropriate; and

(2) continue to provide coverage if the individual's net family income does not exceed the income eligibility limits prescribed by this chapter.

(c) If, during the review required under Subsection (b), the commission determines that the individual's net family income exceeds the income eligibility limits prescribed by this chapter, the commission may not disenroll the individual until:

(1) the commission has provided the family an opportunity to demonstrate that the family's net family income is within the income eligibility limits prescribed by this chapter; and

(2) the family fails to demonstrate such eligibility.

(d) The commission shall provide written notice of termination of eligibility to the individual not later than the 30th day before the date the individual's eligibility terminates.

SECTION 6. Sections 62.154(a) and (d), Health and Safety Code, are amended to read as follows:

(a) To the extent permitted under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any other applicable law or regulations, the child health plan must include a waiting period and ~~and [The child health plan]~~ may include copayments and other provisions intended to discourage:

(1) employers and other persons from electing to discontinue offering coverage for children under employee or other group health benefit plans; and

(2) individuals with access to adequate health benefit plan coverage, other than coverage under the child health plan, from electing not to obtain or to discontinue that coverage for a child.

(d) The waiting period required by Subsection (a) must:

(1) extend for a period of 90 days after[-

~~(1)] the last date on [first day of the month in] which the applicant was covered under a health benefits plan; and~~

~~(2) apply to a child who was covered by a health benefits plan at any time during the 90 days before the date of application for coverage under the child health plan [is enrolled under the child health plan, if the date of enrollment is on or before the 15th day of the month; or~~

~~[(2) the first day of the month after which the applicant is enrolled under the child health plan, if the date of enrollment is after the 15th day of the month].~~

SECTION 7. To ensure the reliability and accuracy of the review process, the Health and Human Services Commission shall phase in the review required by Subsection (b), Section 62.102, Health and Safety Code, as added by this Act, with full implementation not later than September 1, 2008.

SECTION 8. 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 109 - POINT OF ORDER

Representative Talton raised a point of order against further consideration of **HB 109** under Rule 8, Section 3 of the House Rules on the grounds that the conference committee report violates the one subject rule.

The point of order was withdrawn.

Representative Turner moved to adopt the conference committee report on **HB 109**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 109** prevailed by (Record 1967): 134 Yeas, 14 Nays, 1 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; Creighton; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn;

Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; 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; Leibowitz; Lucio; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Miles; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; 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; Thompson; Truitt; Turner; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

Nays — Crabb; Crownover; Elkins; Hancock; Harless; Harper-Brown; Howard, C.; Laubenberg; Macias; Merritt; Miller; Paxton; Talton; Taylor.

Present, not voting — Mr. Speaker(C).

Absent — O'Day.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 1967. I intended to vote no.

Christian

I was shown voting yes on Record No. 1967. I intended to vote no.

Creighton

I was shown voting no on Record No. 1967. I intended to vote yes.

Crownover

I was shown voting yes on Record No. 1967. I intended to vote no.

Flynn

I was shown voting yes on Record No. 1967. I intended to vote no.

Isett

When Record No. 1967 was taken, I was in the house but away from my desk. I would have voted yes.

O'Day

PARLIAMENTARY INQUIRY

REPRESENTATIVE DUNNAM: Earlier Mr. Hartnett was on the back mic and he read to you a congressional precedent that, I believe, you had agreed with and referred to in your ruling. I wanted to know—he had read, I think it's on page 919 of this precedent from Congress on the speaker's power of recognition. The portion he read says, "there's really no power in the house itself to appeal from the recognition of the chair. The right of recognition is just as absolute in the chair as the judgement of the Supreme Court of the United States is absolute as to the interpretation of the law." You recall that, I believe, Mr. Speaker?

SPEAKER: Yes.

DUNNAM: Is the chair familiar with the footnote that is referenced as to that same passage that says, "for a long time the speakers had exercised the right to decline to recognize for a motion to suspend the rules"? And here's the part that Mr. Hartnett did not read. But they "do not have any such rights that is the rights to decline recognition as to motions privileged under the rules and in order." And so I would ask you, Mr. Speaker, do you still agree with Mr. Hartnett's precedent, because Mr. Hartnett's precedent says that the speaker has no right to decline recognition on privileged motions?

SPEAKER: Our answer to Mr. Hartnett was to look at congressional precedents when our rules are silent. Our rules are very much not silent. They are unambiguous.

DUNNAM: Well, when Mr. Hartnett read this and decided this was precedent you said you agreed to it and so you just agree with the first part he read and not the part he didn't read? Because it's very clear. It says they "do not have the right that is the right to decline recognition on motions privileged under the rules and in order." And this is the congressional precedents. Do you accept that as precedent for this body?

SPEAKER: Mr. Dunnam, we just answered your question.

DUNNAM: Excuse me?

SPEAKER: We just answered your question.

DUNNAM: My question is do you accept this congressional precedent that says the speakers do not have any such rights that is the rights to decline recognition as to motions privileged under the rules and in order?

SPEAKER: We expect you to look at congressional precedent when our rules are silent. As we told you earlier, our rules are not silent. Therefore, you do not look at congressional precedent.

DUNNAM: Therefore, I'm sorry?

SPEAKER: You do not look to congressional precedent if our rules are not silent.

DUNNAM: So, my question is very specific. Does the chair believe that this congressional precedent is applicable to the Texas House of Representatives? And the precedent that I am reading is stated in footnote two in the sheet that Mr. Hartnett read.

SPEAKER: Mr. Dunnam, I'll read you Rule 14, Section 1, that answers your question. When rules are silent, if the rules are silent or unexplicit on any question of order or parliamentary practice, the rules of the house are representative of the U.S. Congress in its practice as reflected in the published precedents in Mason's Manual of Legislative Procedures shall be considered as authority. Our rules are not silent.

DUNNAM: And so, Mr. Speaker, this is from the congressional precedents—does this precedent that I just read, is that a precedent binding upon the Texas House of Representatives?

SPEAKER: Mr. Dunnam, we've answered your question.

DUNNAM: I don't think I've gotten an answer to that question, Mr. Speaker. Does this precedent, this congressional precedent, which Mr. Hartnett had only read half of, is this binding on the Texas House of Representatives? It's either yes or no.

SPEAKER: Mr. Dunnam, you can disagree, but we've already answered your question.

DUNNAM: I'm not, I'm not—in your statement, you say the rules, the House Rules do not have a provision for members to remove the speaker mid-session, right? And the question is simple, why can't the chair say yes, this is a binding precedent on the Texas House of Representatives or no, this is not a binding precedent on the Texas House of Representatives? Why can't the chair say that, either way?

SPEAKER: We have already answered your question. It is not binding precedent because our rules are not silent.

DUNNAM: Okay, so this is not binding precedent?

SPEAKER: We've answered that.

DUNNAM: Okay, I would like to appeal that ruling of the chair that you just gave.

SPEAKER: You can't, you can't, Mr. Dunnam, because all you did was ask me—I did not recognize you for that. There is no appeal. It doesn't matter.

SPEAKER: Mr. Hartnett, for what purpose?

REPRESENTATIVE HARTNETT: Parliamentary, Mr. Speaker.

SPEAKER: State your inquiry.

HARTNETT: Since we seem to be having a lot of lawyer arguments from the back mic, I'm going to try to make a clarification. What I read from the back mic was a specific precedent from a specific date that happened from a specific comment from the speaker of the house of representatives. There's been reference to a footnote, and I'd just like some clarification if it can be provided as to whether a footnote, which has no citing to any historical occurrence, is a precedent as compared to what I cited.

SPEAKER: We leave that to the lawyers, Mr. Hartnett.

HR 2892 - ADOPTED
(by Chisum)

The following privileged resolution was laid before the house:

HR 2892

BE IT RESOLVED, BY THE House of Representatives of the State of Texas, that House Rule 13, Section 9, be suspended in part as provided by House Rule 13, Section 9(f) to enable consideration of, and action on, the following specific matters which may be contained in the Conference Committee Report on **HB 1**.

1. Format Changes

For each agency and institution of higher education, the Conference Committee Report moves the informational item entitled "Supplemental Appropriations Made in Riders" from immediately following the "Schedule of Exempt Positions" to immediately after the grand total of all appropriations made in strategies.

For each general academic institution, service agency, health center, health science center, technical college and system office, the Conference Committee report combines all strategy appropriations into one single appropriation with the individual strategies shown, for information purposes only, as the first rider in the institution's bill pattern. This format change does not affect the amount of appropriations to any institution or the method of financing any institution's appropriations.

A record vote was requested.

HR 2892 was adopted by (Record 1968): 100 Yeas, 38 Nays, 1 Present, not voting.

Yeas — Allen; Anchia; Anderson; Aycock; Bailey; Berman; Bohac; 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; Eissler; England; Escobar; Farabee; Flores; Flynn; Frost; Garcia; Gattis; Giddings; Gonzales; Gonzalez Tourelles; Goolsby; Guillen; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Heflin; Hilderbran; Hill; Hodge; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Keffer; King, S.; King, T.; Kolkhorst; Krusee; Latham; Laubenberg; Lucio; Macias; Madden; Martinez; McClendon; McReynolds; Menendez; Miller; Moreno; Mowery; Murphy; O'Day; Orr; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Quintanilla; Raymond; Riddle; Rose; Smith, W.; Smithee; Solomons; Strama; Swinford; Taylor; Van Arsdale; West; Woolley; Zedler; Zerwas.

Nays — Alonzo; Bolton; Burnam; Coleman; Davis, Y.; Dunnam; Dutton; Eiland; Elkins; Farias; Farrar; Gallego; Geren; Hernandez; Herrero; Hochberg; Homer; Jones; Kuempel; Leibowitz; Mallory Caraway; Martinez Fischer; McCall; Merritt; Miles; Naishtat; Noriega; Ortiz; Pierson; Pitts; Puente; Ritter; Rodriguez; Smith, T.; Straus; Thompson; Vaught; Veasey.

Present, not voting — Mr. Speaker(C).

Absent — Castro; Haggerty; King, P.; Morrison; Oliveira; Olivo; Talton; Truitt; Turner; Villarreal; Vo.

STATEMENTS OF VOTE

I was shown voting no on Record No. 1968. I intended to vote yes.

Kuempel

When Record No. 1968 was taken, I was in the house but away from my desk. I would have voted yes.

Morrison

When Record No. 1968 was taken, I was in the house but away from my desk. I would have voted no.

Olivo

When Record No. 1968 was taken, I was in the house but away from my desk. I would have voted yes.

Turner

MESSAGE FROM THE SENATE

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

HB 1 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Chisum submitted the following conference committee report on **HB 1**:

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

Ogden
Zaffirini
Whitmire
Duncan
Williams

On the part of the senate

Chisum
Guillen
Turner
Kolkhorst
Gattis

On the part of the house

HB 1, General Appropriations Bill.

HB 1 - DEBATE

REPRESENTATIVE CHISUM: Mr. Speaker, members, we've worked a long time on how we were going to present this bill to the house after the conference committee has gone through and added and taken away issues. For an overview, I believe all of you have in your possession, or should have by now, this document right here. On the front—if you'll read that document, it gives you an extremely good overview and certainly something that you could take to your local Lions Club or Rotary Club or wherever you want to get a really good idea about the budget, and you'll impress them. The budget is obviously the largest budget this state has ever passed, some \$52 billion, \$152 billion. That does not include the property tax, which is another \$14.2 billion. This document covers a lot of that stuff, and I would urge you to read that and use that as you explain the budget.

One of the issues that's primary in this is the Health and Human Services part of the budget, which is \$51 billion in Health and Human Services. Thirty-five point five percent of the total part of the budget. Another, the largest part of the budget is education, which it should be. Sixty-one billion dollars in education spending. The other items in here are judiciary, public safety, and criminal justice \$9 billion. That's a resource of \$3 billion. Business and economic development, \$20 billion. Regulatory, \$739 million. General provisions, \$1.8 billion. The legislature, \$326,000, and general government, \$3.8 billion. So those are the items in the budget that account for most of the budget.

I'd be happy to answer any questions.

REPRESENTATIVE PITTS: Warren, when **HB 1** left the floor, how much was it?

CHISUM: \$150 billion.

PITTS: When **HB 1**—\$150 million?

CHISUM: \$150 billion.

PITTS: Billion dollars, and what is it today?

CHISUM: \$152,456,000,000.

PITTS: And what was the senate bill?

CHISUM: The senate bill was a billion or two over ours.

PITTS: But when we left the—when **HB 1** left the house, we had \$4 billion left for property tax relief.

CHISUM: Yes, we did. We had \$4.2 billion.

PITTS: \$4.2 billion.

CHISUM: Yes, sir.

PITTS: And how much did the senate have in excess for property tax relief?

CHISUM: About \$3 billion.

PITTS: Okay. And what do we have today?

CHISUM: We have 2.5.

PITTS: Okay. So we left here—when the house voted on **HB 1** we had a surplus, as you would call it, of \$4.2 billion.

CHISUM: That's correct.

PITTS: And today we have 2.5.

CHISUM: Yes, sir.

PITTS: And so in the conference committee, you compromised and spent more money.

CHISUM: Yes, we did, and Jim, when we left here we knew in our budget we made no provisions for the Frew lawsuits of \$700—

PITTS: But the senate did.

CHISUM: The senate did.

PITTS: So they had that money already in their budget.

CHISUM: They had that money in their budget. We were about a billion dollars short on lawsuit funding that was included in the senate budget but was not in ours.

PITTS: What else?

CHISUM: We actually, turned out we spent more money on Health and Human Services than were in either budget as well as education. Those were the two largest increases in the budget.

PITTS: Warren, would you look at Article III, page 231, on Section 64, Special Items Appropriations?

CHISUM: Give me that page number again.

PITTS: Article III, page 231.

CHISUM: Yes, I see it.

PITTS: There are Special Items Appropriations, why were those items not included in the bill pattern under those universities?

CHISUM: Well, the issues that we've decided to do in these special articles was to list these below the line so they're not drawn up in the Article III budget. We listed them below the lines so they are, in fact, subject to the governor's veto.

PITTS: Okay, so you put—I gather these are member's requests, is that what that is?

CHISUM: Yes, they are, both the senate and the house, and I think they're almost even, Jim.

PITTS: Pardon me.

CHISUM: They're both senate and house, they're not just house members'. Some of them came from the senate.

PITTS: So those are members' requests that were made to you at some point during the conference committee?

CHISUM: That's correct.

PITTS: In the last several weeks?

CHISUM: Most of them, Jim, were in special items listed by the university that didn't necessarily get adopted by both of them. The ones that were adopted by both of them are pulled under the budget.

PITTS: So that's \$123 million.

CHISUM: That's correct.

PITTS: And you are admitting that those are subject to veto by the governor?

CHISUM: Yes, they are.

PITTS: If you would have put some of those items in the bill pattern with the university, they would not be subject to veto, would they?

CHISUM: That is correct, yes.

PITTS: Okay. Let me ask you, were there—there's no other institutional enhancements for other universities that's in the bill pattern, is that correct, that we added this session?

CHISUM: Yeah, that's correct. And Representative Kolkhorst did that part of the budget. I'm happy to answer though.

PITTS: We added, in the budget, not in the special items appropriated, we put it in the budget. That would mean it would be veto-proof.

CHISUM: Yes, they are.

PITTS: \$9 million for UT Permian Basin, did we not?

CHISUM: Jim, do you mind Representative Kolkhorst answering that?

PITTS: That'll be great.

REPRESENTATIVE KOLKHORST: Hello, Representative Pitts.

PITTS: Let me just ask you, and I'm going to ask you a question for Leo Berman. You put University of Texas at Tyler Institutional Enhancement at \$1.5 million.

KOLKHORST: Right.

PITTS: In the part you said can be vetoed. Is that correct?

KOLKHORST: Correct, and if you could for a minute, Representative Pitts—

PITTS: Let me just ask you, and that is in Section 4 for special items appropriations of \$1.5 million for UT Tyler.

KOLKHORST: Correct.

PITTS: But for UT Permian Basin you put, that was passed on this floor, \$9 million that is in the bill that is veto-proof, is that correct?

KOLKHORST: Right, and if you'd allow me for a minute to elaborate on that. The senate conferees—

PITTS: You also put a parking lot—

KOLKHORST: Can I answer that question?

PITTS: —for UT Permian Basin in the body of the bill, did you not?

KOLKHORST: Let me answer the first question.

PITTS: \$7.5 million for UT Permian Basin.

KOLKHORST: I'm going to answer the first question.

PITTS: TxDot, is that correct?

KOLKHORST: And that's not my part of the Article, if you'd let me answer the question here. What the senate conferees and the house conferees decided to do was there was \$63.7 million in special items that either passed the house or the senate. Twenty million dollars more passed the senate. We respected each other's special items that had be vetted in each other's chambers. Those that had either passed the house or the senate were rolled up into the bill patterns. Any items that were added during conference committee were put into special provisions in Article III. Jim, as you know, there are some that are new, something that is new, and I will tell that we spent the last week working very closely with the governor's office. He had a very aggressive higher ed plan that included the incentive funding which we funded at \$100 million. And he had wanted transparency and line item veto power within the budget. I compromised with him—

PITTS: So, it was the governor's idea to have the largest budget that we've ever had?

KOLKHORST: I'm not going to speak for him on that. I'll tell you what we added during conference; I'd be happy to answer those questions. In the end, when we were trying to close out the bill, one of the things that he had and laid out in early February—and I think our subcommittee was the first to, after the press conference, to have them lay it out in our committee—was a plan that would have swept all special items, but among other things had given incentive funding on graduation rates. We had worked with the governor's office to come up with something that was satisfactory for them. But the theory of what special items are rolled up in that bill and what items are not is straight down the line. The numbers that passed the house, the special items that passed the house and the special items that passed the senate were included in the bill patterns and anything that was added during conference was put into special provisions of Article III.

PITTS: Lois, when you went back home after the last session, regular session, and we had **SB 1**, did you hear criticism over the budget's size?

KOLKHORST: When I went home, is that what you're talking about?

PITTS: The speaker had told me that every place he visited he got criticized about the large budget that we passed last session.

KOLKHORST: Well, and looking at our numbers, you and I have talked about that. It was a large budget, it was a makeup budget from 2003, and it did, I think, slightly outpace our growth and our population. This budget is under our growth and our population and inflation.

PITTS: But this increase is more than the last biennium.

KOLKHORST: We have an all-funds increase of 7.7 million, which, I believe, is over a percentage point below both growth and inflation.

PITTS: Yeah, but you put some other items as really general revenue for the next biennium on **HB 15**, did you not?

KOLKHORST: Say that again. I will tell you that one of the things that I saw in higher ed this session—

PITTS: I'm not talking about higher ed. I'm talking about **HB 15** or **SB 15**, whatever it was, the supplemental appropriations bill.

KOLKHORST: I'm going to let Representative or Chairman Chisum answer those questions, and I'd like to go ahead and stay on Article III for a moment and some of those raw numbers. You know, we passed an aggressive TRB package last session that are included in our numbers and we have a number of other items from last session that we added in this budget this time. HEAF was increased, doubled actually from last biennium in statute, but we didn't put that in last year's budget you well remember. We put that \$175 million in that. So right off the bat, we had in statute \$475 million that we had to include in this year's budget in Article III for higher ed.

PITTS: Let me ask you, I don't understand about Section 54 about why this added at the end like this. Can you explain that again?

KOLKHORST: Sure, in Section 54, are we talking about the special provisions relating to state agencies relating of higher education on page 3, III-231?

PITTS: I don't understand the decision, I mean I have—that is usually in the bill pattern with these universities, and I don't think it's ever been done this way.

KOLKHORST: I think it was pre-Governor Clements that it was probably done that way.

PITTS: How long ago was that?

KOLKHORST: That was a long time ago. And that is why—1989, I believe it was. One of the things—again if you go back to the governor laying out his plan for higher education, he wanted line item veto in Article III. Representative Pitts, you've done a good job, a very capable job of doing Article III before in a tough year in 2003. And you understand that to veto in Article III you have to veto the entire appropriation for that particular university. That was one of his plans. As we tried to close out the budget last week and work with the governor's office, this was a high priority for him. It seemed like a good compromise at the time. With it, I will tell you, Representative Pitts, comes much responsibility. You've been the chairman and you've also been the subcommittee chair for Article III, and you know how many of our members ask us and university presidents that come in our offices and are there all the time. With this, with this responsibility it comes—it's going to be a lot of responsibility for the governor and he'll feel the same pressure that you and I have felt and what you can and can't do for universities.

PITTS: So, is Section 54 kind of like a wish list?

KOLKHORST: No, it is funded if you're talking about—I want to make sure that—

PITTS: But if you did not put it in the bill patterns, why is it separate? And you are putting it so the governor decides and can veto those. So it's more of a wish list that members—in other words we're going to put this in the budget, but we can't guarantee you that the governor is not going to veto it. If you are guaranteeing the members that it will be veto-proof, you would have put it in the bill pattern.

KOLKHORST: And that is something that may have triggered an entire veto of this budget. And I will tell you that when we work with the governor, just like on transportation—and as you all know, I think speaker pro tempore calls me the "Toll Road Queen"—we have to sometimes compromise with the governor. That's the separation of powers and we have great respect. And this is something that we were able to work out in the last week when we tried to close out the budget.

PITTS: I guess I need to talk to Warren again.

KOLKHORST: Okay, thank you.

PITTS: Warren, would you explain to me Section 1965, 19.65?

CHISUM: 19.65?

PITTS: Yes.

CHISUM: Where are you looking at?

PITTS: It's at the very end, Article IX.

CHISUM: Article IX?

PITTS: On page 990.

CHISUM: You said 19.65 or 85?

PITTS: 19.65, Warren.

CHISUM: Well, 19.65 was left blank.

PITTS: Was it left blank when they printed it, Warren?

CHISUM: It was left blank because that article was struck by the conference committee, and so residence—

PITTS: When was it struck?

CHISUM: By resolution when we were—

PITTS: Was it the one that was struck Friday at 7:15 or 7:30 when you had a meeting?

CHISUM: That is correct.

PITTS: Pardon me?

CHISUM: Yes.

PITTS: What was that?

CHISUM: It was a study put in there, I believe it was a study put in there about health care services in three counties in South Texas where they have managed health care.

PITTS: Well, why was it struck?

CHISUM: It was a senate rider that they chose to strike by a resolution that we brought to the house.

PITTS: What member's district was that?

CHISUM: Three counties in South Texas.

PITTS: Do you remember what member it was? Was it Representative Lucio?

CHISUM: I believe it was eight members that represent that area.

PITTS: It did include Representative Lucio?

CHISUM: I believe that's right. Senator Lucio as well as Representative Lucio and perhaps Senator Zaffirini.

PITTS: And that was when? Friday night?

CHISUM: Yes.

PITTS: And what did Representative Lucio do Thursday?

CHISUM: I'm not sure. I guess Representative Gattis might be able to help you with that. If you'd like for him to—

PITTS: Can you tell me—

SPEAKER: Mr. Pitts, do you want Mr. Gattis?

PITTS: Not at this time. Could you look at 19.72 on page 94?

SPEAKER: Mr. Pitts, do you or do you not want Mr. Gattis to answer?

PITTS: I was asking Warren questions, Mr. Speaker.

SPEAKER: Chair recognizes Mr. Chisum.

PITTS: You can answer, Dan, that's fine.

REPRESENTATIVE GATTIS: Representative Pitts, the issue was that this was a rider that was put into the bill, that was actually requested by certain members, and that had it gone through, it would have put Representative Lucio in a very, very bad position in his district. And so out of respect for members on this floor, so that they don't get cut up back in their district, because it would have been very detrimental to him and his community, we took this rider out at the request of the senate. It is something we did not put in on the house side, the senate did, the senate reconsidered it, and asked to take it out, and then so it was not a benefit to Representative Lucio. To have it in there was a detriment, and so we removed it, partly at his request.

REPRESENTATIVE GALLEGO: Mr. Speaker, how much time is allowed?

SPEAKER: Ten minutes.

GALLEGO: How many?

SPEAKER: Ten minutes.

GALLEGO: Mr. Speaker, is there not a provision in the rules that relates to 20 minutes?

SPEAKER: If you'll look at Rule 5, Section 28, it says that during the last 10 calendar days of regular session, and the last five days of a special session, all speeches shall be limited to 10 minutes.

GALLEGO: What was that about 10 minutes, Mr. Speaker?

SPEAKER: What?

GALLEGO: I'm sorry—

SPEAKER: It says it shall not be extended, but if you want to extend that, Mr. Gallego, you can move to suspend it, and we can take a vote.

GALLEGO: I wasn't sure, Mr. Speaker, there was a sentence in there about Sundays. Except Sundays, I heard. I didn't hear what you read, is my—

SPEAKER: It says, "Sundays excepted."

GALLEGO: Right, so that rule doesn't apply, the 10 minutes doesn't apply on Sunday.

SPEAKER: You're correct, and I'm wrong.

GALLEGO: And so—

SPEAKER: Chair recognizes Mr. Chisum.

GALLEGO: So on Sundays, the time is double, is it not?

SPEAKER: You're correct, Mr. Gallego, you're correct.

GALLEGO: Mr. Chisum, I have some questions with respect to three issues that will touch on several of the articles, but first let me start off with Parks and Wildlife. Are you the person who did the Parks and Wildlife part of the budget, or would I be better off talking, well, let me start off with some general policy arguments. In the past, what was done, it's very easy to get carried away with a lot of what even in D.C. has been referred to as pork, when "bridges to nowhere," and those kinds of special items, for individual members, and so, in particular, with money that's allocated to grant programs, the idea was always to have as much of that as possible in a grant program, and allowing that to go, essentially, in the competitive grant process.

CHISUM: Yes, sir.

GALLEGO: And I noticed that this year, as an example, in Parks and Wildlife on Section 30, which would be Article VI, page 38, it requires the agency—first, let me back up. If we're going with competitive grant programs, I noticed, for example, that there are a lot of special—

SPEAKER: Mr. Gallego, can I correct myself real quick?

GALLEGO: Yes, sir.

SPEAKER: If you read this, I think that you and I both read this, and on the Sundays, it's not a big deal, I just want to make sure we're right. It says that during the last 10 calendar days of the regular session, and this on time of speeches, okay, and the last five calendar days of a special session, excepting Sunday, which means it doesn't count when one of those days is toward 10 or five, all speeches shall be limited to 10 minutes, and shall not be extended. So it doesn't take Sunday out, it takes Sunday out for counting. I've had about 10 people come up here and mention it.

GALLEGO: Okay, I read it to take 10 Sundays out of the 10-minute provision. Alright, well, in that case, Mr. Speaker—

SPEAKER: But we'll recognize you to extend, why don't you, that may solve the whole deal. Why don't you just move—

GALLEGO: Thank you, Mr. Speaker. I move to suspend all necessary rules applicable to the 10 minute time limit, so that we can have a full debate on **HB 1**.

SPEAKER: No, I think we need to do it on each speech, so that we don't—

GALLEGO: Okay, then I move that the rule be suspended so he can have more time to lay out the bill.

Representative Gallego moved to extend speaking time on **HB 1**.

A record vote was requested.

The motion to extend time prevailed by (Record 1969): 136 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Bailey; Berman; Bohac; Bolton; Bonnen; Branch; Brown, F.; Callegari; Chavez; Chisum; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Darby; Davis, J.; Davis, Y.; Deshotel; 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; Harless; 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; 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; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smithee; Solomons; Strama; Straus; Talton; Taylor; Thompson; Truitt; Turner; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

Present, not voting — Mr. Speaker(C).

Absent — Aycock; Brown, B.; Burnam; Castro; Christian; Crownover; Delisi; Driver; Krusee; Olivo; Pierson; Smith, W.; Swinford.

SPEAKER: That's great. I just wanted to clear it up.

GALLEGO: That's fine, Mr. Speaker, I read it the same way. Thank you, Mr. Chisum. So how much money is appropriated for local parks?

CHISUM: For local parks? Let me look on my magic sheet here.

GALLEGO: Because for the last four years, Mr. Chisum, local parks grants were cut in half, in 2004-2005, and then by two-thirds in 2006-2007. And the reason that I tell you that, is because there are 18 specific parks that now get funded as a priority over all other parks. So that money is taken out of the competitive grant process, and it removes the level playing field that once existed, so that all communities could have their need for local recreational opportunities fairly evaluated. Now there are 18 specific, local parks that are being developed, and that really is a break with established practices, is it not?

CHISUM: Well, Pete, I'm looking at a 2001 budget, and I noticed in it that it had local parks specified in here, in the Metro Carter site, it had a park specific in that. It had \$500,000 to establish a matching grant in Region IV. I don't know what that is.

GALLEGO: That's a state park, is it not?

CHISUM: I'm not sure.

GALLEGO: And while the budget did identify state parks that were getting additional revenue—

CHISUM: Yes.

GALLEGO: But it didn't ever, that I recall—local grants were handled through a competitive process.

CHISUM: Yes. In this, it listed local parks. So I'm assuming that they're local parks, in addition to the Rio Grande is a local park for \$250,000, and a park restoration, \$1 million, which I believe would be a local park, it says the city of Houston.

GALLEGO: Okay.

CHISUM: Herman Park.

GALLEGO: Alright.

CHISUM: I believe that's in Houston. So it's not a real precedent. And let me tell you, Pete, in this list of parks that was put on on this house floor, we reestablished that they had to comply with every part of Rule 25 of Parks and Wildlife. So they still have to comply with all of the 50/50 matching grants, and go on the scoring list, just like the rest of them.

GALLEGO: But instead of competing, they were itemized in the bill.

CHISUM: Yes, sir.

GALLEGO: And let me ask another, with respect, I represent Garner State Park, which is, in my view, one of the most beautiful in the state, but you have Section 30 on page 638. It requires the agency to contract with a private vendor

with expertise in public attendance and collections, to determine whether repairs or new construction will increase park attendance and generate more money. That study has to be done, as I understand it, before the agency can proceed with construction or repairs of facilities. So first, my question is, how many vendors are out there that have expertise in determining whether repairs or new construction will increase park attendance and generate more money?

CHISUM: I have no idea how many are out there. This was a request by Parks and Wildlife, and certainly some—

GALLEGO: So you have no idea whether this is a sole source rider and requires us to contract with one entity?

CHISUM: I do not know that it's a sole source that requires—

GALLEGO: Well, isn't that kind of an important question to ask, Mr. Chisum?

CHISUM: It is, but it's still a judgement call, and it's a study about that contracted, so I'm assuming that the study will reveal whether or not they're a sole source contractor.

GALLEGO: Well now, that language, as I read it, means the agency can't even undertake life, safety, or sanitation repairs at state parks until the study is completed, and so we can't even fix the bathrooms at Garner State Park until that study is completed, is that what your rider says?

CHISUM: Actually, we had an audit of state parks, this is one of their recommendations. This is also a recommendation of the Sunset Committee.

GALLEGO: So again, we can't even fix the restrooms at Garner State Park until this study is completed.

CHISUM: I think that may, in fact, fall under minor repairs, as opposed to this one. I'd be happy to ask that question of someone else.

GALLEGO: Again, Mr. Chisum, isn't that something that you'd want to know before setting the bill? Let me ask you another question with respect to—

CHISUM: We did have money in this bill for minor repairs, and then we have for major renovation of parks, and certainly we would not want to renovate a park that—

GALLEGO: Well, Garner State Park is a park that was built as a Depression-era Works Progress Administration, CCC park. And with respect to ADA compliance, with respect to sanitation there, the bathrooms, it needs significant reconstruction work, and what you're saying is, even before we can fix any of that, somebody has to do a study. That's what that rider, that's how I read that rider.

CHISUM: And that was a recommendation of the audit committee.

GALLEGO: Now, with respect to the higher ed provisions, everybody always wants special items for their universities, and I understand that. But again, in order to not have those issues at junior college levels, the ideal was always to put all the junior college money into the formula.

CHISUM: That's correct.

GALLEGO: And this year, I notice that you have several special items in junior colleges.

CHISUM: Can you point those out? Because actually, we were pretty careful about that. I think we cleaned all those up. So if you could point me to the page where you say that is, I'd be happy to look at it.

GALLEGO: Well, I'll give you an example, and I hate to pick on Mr. Bonnen, but Mr. Bonnen, as I understand it, represents the Brazos Port Community College. They get a Bachelor of Applied Technology program, is that not accurate?

CHISUM: Yes, that is accurate.

GALLEGO: And is that not a junior college?

CHISUM: Pete, I'm informed that's a continuation of an existing program; it's not a new program.

GALLEGO: It's additional revenue to a special allotment to a junior college, is it not?

CHISUM: Yes, and we had one item in there. I know we had \$600,000 that went to three junior colleges that you can get a four-year Bachelor of Arts degree from there, so it's not to say that we had absolutely forbidden any junior college from getting anything, but we did try to—

GALLEGO: Let me give you another example, Mr. Chisum. Not to pick on Ms. Delisi, but there is now a bio-science institute at Temple Community College. Is that not a special item at a junior college?

CHISUM: Where do you see that, Pete?

GALLEGO: I have a listing on Article III, page 55.

CHISUM: Article III, page what?

GALLEGO: 55.

CHISUM: I know those colleges had some stuff in there.

GALLEGO: And again, Mr. Chisum, as a West Texan you appreciate the old saying about—there are so many special items in this bill right now, whether they're local parks, whether they are community colleges, that are breaks with traditional spending. As a West Texan, you appreciate the old saying about the difference between pigs and hogs, and that is, pigs get fed, hogs get slaughtered. And so, it seems like there's definitely a lot of hogs in this bill as it has now come out of conference.

CHISUM: Well, Pete, we looked very carefully as we went through this, and this was the decision of the conference committee, and I assume that anyone could assume that they were special items. It's not the first time we've had special items in the appropriations bill.

GALLEGO: No, it isn't. Again, it's the level of special items funding, and the fact we've expanded special items now into junior colleges. We've expanded a lot now into local parks, where there's at least 18 local parks getting funding, and at least 18. That takes that money out of the pool for competition for others. Again, Mr. Chisum, as the person who represents more state parks than anyone else in this chamber, the money that goes, when it's competitive, I don't have an issue with that, but when it's not competitive, and we're trying to direct money into an individual's districts, for whatever reason, then therein lies the problem for me.

CHISUM: And Pete, I certainly appreciate you, and I appreciate you pointing that out. I agree with you totally.

REPRESENTATIVE Y. DAVIS: Mr. Chisum, I want to talk to you a little bit about the conference committee going outside of the bounds. How much does this budget—what does it represent in terms of you going outside of the bounds? How much of the budget is reflected in these changes?

CHISUM: In the outside the bounds?

Y. DAVIS: Yes, sir.

CHISUM: Well, sometimes when you go outside the bounds that really doesn't cost, sometimes you go outside the bounds fees—

Y. DAVIS: No, but this—

CHISUM: Have been reduced, and I have not added up the outside of the bounds, because I'm like you, I got this document a short while ago, and I have not—

Y. DAVIS: Yes, but you knew what was in the document, you have to have some notion of how much you're asking to spend, or how much you're taking away in order to determine whether or not it fits into the overall budget that you've identified as the budget we're spending. So you have to have some sense of that.

CHISUM: Yes, and I have Legislative Budget Board people in the back, and they will certainly add that up for you, how much was outside the bounds of that. But we added them because we looked very carefully at them, but sometimes we went outside the bounds in actuality to reduce them. Most of them were in Article II.

Y. DAVIS: I understand that, I'm just wondering if you knew how much you were going out, whether it's an increase or reduction, there has to be someone who has some—

CHISUM: There is, and we do have that, it's a fair question, and we will try to get you an exact answer.

Y. DAVIS: Okay. What does it mean? As I was looking through the budget, and it's been a while since I've been on Appropriations, but I've never seen anything where it says you want to exceed the highest, or the lowest, in terms of an appropriation, which suggests that you can go up to what the first appropriations budget has, or you can lower it. How do we determine what the actual numbers are going to be when you have those references in the bill passing?

CHISUM: If you will look at the resolution, it actually has each one of them spelled out in there where they—

Y. DAVIS: I understand the resolution says it, but the resolution says, if you look at one of the pages, for example, if you look at page 11, it says you're going to suspend the rules to allow the conference committee to exceed the highest, or to be less than the lowest of items in appropriations. And because it's throughout the bill pattern, how are we to measure what the actual number will be?

CHISUM: You're looking at page 11, Article I, or what?

Y. DAVIS: It was Article I, page 11, but it's throughout the bill pattern, where you actually ask for the suspension of rules to allow you to either exceed the highest or be less than the lowest of items in appropriations that are contained in the house and senate versions of the bill. They're different amounts. What it suggested to me is it's not a hard number, and I'm wondering how we're able to define what the number is going to be if we give you the latitude to go up or down? How is one budget based on that?

CHISUM: That's the reason we have the resolution, so that we can explain the differences and be happy to answer, and particularly in either of those differences.

Y. DAVIS: But if you look at the bill pattern as it relates to the strategy that you identify, you don't actually make a difference. The bill pattern and the resolution have the same numbers, so you're not reflecting a change up or down. And so I'm wondering how one would know whether you're going to go up or down, because it's not reflected in the resolution, and it's not any different than the bill pattern. So a member looking to see what we actually budgeted for one item, we're not able to tell. So tell me how we're supposed to interpret what that really means. Are you going to be that fluid and fluctuate that much?

CHISUM: Well, you'd have to go back to the particular item in the side-by-side; that's where you would find that out.

Y. DAVIS: But I guess I want to—let me explain to you. When I looked at the budget, and with the resolution side-by-side, the number doesn't change from what you have in the resolution and in the budget. In your rule that you're asking us to suspend on says you want to have the flexibility to go up or down, but you're not reflecting it, so when are you going to make the up or down move or shift the numbers, when does that happen?

CHISUM: Well, it's absolute in the bill. I guess I'm not following your question.

Y. DAVIS: Okay.

CHISUM: I want to give you a correct answer.

Y. DAVIS: Well, let me try it again, ask it again. So the rule that you're asking us to do is to suspend the rules to allow you to exceed the highest or the lowest for that budget, for that line item. If you look at the resolution, and you look at the bill pattern, those numbers have not changed. So the question is, when are you going to use, when are you going to make the adjustments from high to low, so we'll know what the actual number is going to be?

CHISUM: Well, in the bill pattern, it spells out what the actual number is, and if you'll look in the resolution under Rule 13, for instance, it would allow you to exceed if you're using Rule 13, Section 9(b).

Y. DAVIS: And my question is, does this resolution, should this resolution contain the new number or not? Because when you look at the number, it's the same. When you look at the bill pattern—

CHISUM: And it's not necessarily. The resolution just spells out the section that you're suspending the rule on, whether it goes up or down would have to go back to the budget to determine—

Y. DAVIS: That's what I'm asking. When do we go back to the budget that's—

Representative Y. Davis moved to extend speaking time on **HB 1**.

A record vote was requested.

The motion to extend time prevailed by (Record 1970): 107 Yeas, 10 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; Berman; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Darby; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Garcia; Gattis; Geren; Gonzales; Gonzalez Toureilles; Guillen; Haggerty; Hamilton; Hardcastle; Harless; Heflin; Hernandez; Herrero; Hill; Hodge; Howard, C.; Howard, D.; Isett; King, S.; King, T.; Kuempel; Leibowitz; Lucio; Madden; Mallory Caraway; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; Oliveira; Olivo; Orr; Otto; Parker; Patrick; Peña; Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Smith, T.; Smith, W.; Strama; Straus; Swinford; Talton; Thompson; Turner; Van Arsdale; Vaught; Veasey; Villarreal; West; Woolley; Zerwas.

Nays — Flynn; Hancock; Hartnett; Latham; Laubenberg; Paxton; Smithee; Taylor; Truitt; Zedler.

Present, not voting — Mr. Speaker(C).

Absent — Bohac; Bolton; Chisum; Christian; Crownover; Davis, J.; Frost; Gallego; Giddings; Goolsby; Harper-Brown; Hilderbran; Hochberg; Homer; Hopson; Hughes; Jackson; Jones; Keffer; King, P.; Kolkhorst; Krusee; Macias; Martinez; Miller; O'Day; Ortiz; Phillips; Pickett; Rose; Solomons; Vo.

Y. DAVIS: Thank you. Now what I was suggesting was that if you look into where you invoke that suspension of rules, if you look at that line item, that strategy, the number doesn't change. So you're suggesting that you're, at some point, you're going to go back and make that adjustment after we vote on the bill?

CHISUM: No, it made—the bill, it's spelled out what it is. You could tell me which one you're talking about—

Y. DAVIS: Well, throughout the bill, it's throughout this resolution. Look at Article I-XI. I'm just picking out one. It's throughout the bill pattern as I checked it, it appeared as though the resolution doesn't change the numbers from what the original bill pattern says.

CHISUM: Okay, I hope I'm not—I'm certainly not trying to mislead you. The resolution, by suspending this particular rule, gives the conference committee the permission to exceed or go below.

Y. DAVIS: And I understand that, but when we vote today, the conference committee is going to be discharged, so who is going to make the determination? The conference committee will not. Isn't that correct?

CHISUM: No, it just says that we have the ability to do that with the suspension of the rules. The actual number in the bill is where we went. Is that okay? I mean—

Y. DAVIS: I guess that's okay, but what I'm trying to ask you is why are we trying to suspend the rules to allow you to have the flexibility on the budget, to move to exceed up or down, if in fact the bill pattern is what we're going to do?

CHISUM: Well, if you take, for instance, in parks there was a lot of fluctuation in parks, whether or not we bonded the restoration of the historical sites, or where we paid GR money for those historical sites. Likewise, there was a lot of discussion about how much money we put in local parks. We exceeded in local parks what was in either bill. Those are—

Y. DAVIS: Mr. Chisum, with all due respect, that doesn't answer my question relative to—

CHISUM: Okay.

Y. DAVIS: —relative to the suspension of Rule 13, Section 9(d)(3). What I'm trying to ask you is who and when does the number become final?

CHISUM: When it's printed in **HB 1**.

Y. DAVIS: Okay, when is that printed? When we finish here?

CHISUM: We are on **HB 1** now.

Y. DAVIS: Exactly. Are we able to change any numbers here on the house floor?

CHISUM: No, we're not.

Y. DAVIS: Okay, so my question is, the resolution that allows you to go in and up, to go up and down—with this resolution, will there be any other additional changes?

CHISUM: I'm sorry, I've got too much conversation up here. Alright.

Y. DAVIS: And while you're thinking about that, let me ask you the other part of this that I don't understand as it is related to the budget. It says that you are able to exceed, alter, or amend. What does that mean?

CHISUM: I think it means exactly what it means, that in the rules we are able to do that. We have to bring it back to you and the resolution and have permission, and that's what we got when we passed the resolution, and then the results of that action are printed in **HB 1**. So, what you see in **HB 1** is the actual decision of the conference committee. It is not amendable, it is not changeable, it is the actual budget.

Y. DAVIS: Okay, I want to understand as it relates to—I was looking at the transfer authority on—this is Article 512—I noticed that we raised the transfer authority in this agency. Is that 25 percent transfer authority? Is that what we use in most agencies?

CHISUM: I believe it's not. I believe in most agencies it's more like 10 percent budget authority.

Y. DAVIS: And so when we have moved to increase the transfer authority to 25 percent, what's the basis for doing that? Particularly this is an agency where there is so much oversight. Why would we need to move the transfer authority up to 25 percent?

CHISUM: Can you tell me exactly which agency? I want to be sure that I'm following you.

Y. DAVIS: Article V, Section 12, in the resolution.

CHISUM: In the resolution?

Y. DAVIS: Yes, sir. I mean, this is where you made the changes, this is where you went outside the bounds for your **HB 1**. Isn't that correct?

CHISUM: Yes, okay. I find that to be the bond authority which social security benefits relates to.

Y. DAVIS: No, no. It says transfer authority between strategies where you're allowing the youth commission to transfer up to 25 percent of the appropriations.

CHISUM: I'm sorry, Ms. Davis, I could not hear you.

Y. DAVIS: Okay, if you look at the resolution packet which is in Article V, page 12, where it allows you to increase in this agency's transfer authority within a strategy.

CHISUM: Group insurance? Am I on the same page you're on? Group insurance?

Y. DAVIS: No.

CHISUM: Bond debt service payments?

Y. DAVIS: No, no, no.

CHISUM: I hope I'm on the same page you're on.

Y. DAVIS: You're not.

CHISUM: Perhaps Mr. Pitts could—I think I am on transfer authority. Yes, I believe the agency you're looking at is TYC, and let me tell you the reason we did that. Because we determined that TYC was under such a change of flux that

they were in fact going to be closing some units and opening some new units and we did not know how much construction they were going to need. How much money they were going to need in order to move, and so we gave them broad transfer authority. We almost considered doing the block grant in order to get the Texas Youth Commission back up and running because we didn't want to inhibit their ability to make some drastic changes that I think they're going to make over there.

Y. DAVIS: So based on the oversight that was put into place as a result of the issues there, you're suggesting that they need additional transfer authority. It's only one strategy to go into a contractor capacity.

CHISUM: Yes, and—

Y. DAVIS: So, are we moving into a more privatized system? Is that what we're doing?

CHISUM: You could ask Mr. Madden. He's shaking his head over there. It's not a more privatized system. The system will be decreased in size somewhat, and I know they have some ability to build a new facility in a metropolitan area. I have no idea which metropolitan area that's going to be. I know the Texas Youth Commission we determined to be in trouble and needed extraordinary budget authority and we chose to—

Y. DAVIS: And Chairman Chisum, I don't mean to cut you off, but they're going to cut me off so I got to rush through my questions because I have a lot of questions. If you look at Article VI, page 1. When we're looking at generating marketing opportunities—

CHISUM: Okay.

Y. DAVIS: I noticed that we set aside a million dollars in 08' for the Thurhog Abatement Program to look at marketing opportunities—

CHISUM: Yes, we did.

Y. DAVIS: And we set aside a million dollars to do marketing for the zebra chip—whatever that is. I'm just wondering why you didn't find it equally important to set aside a million dollars for outreach and marketing on AIDS, to tell people about, inform them about AIDS and HIV? When we brought it to the floor I think there was a lot of opposition, but yet you can put marketing in to figure out how to look at the Hog. What is this zebra chip? You got a million dollars to do the zebra chip research.

CHISUM: We raise a tremendous amount of chip potatoes in this state, all the way from the Valley through Dallas/Fort Worth. The entire State of Texas, and there is a disease that has cropped in from Mexico that has come across the border and it's infecting the potatoes that we have in the Valley and it's moving north.

Y. DAVIS: So are you suggesting to me—and I don't want to cut you off—but I don't want to miss this point. Are you suggesting the marketing and outreach to protect the potatoes from disease is more critical than marketing and outreach to protect human lives?

CHISUM: No, ma'am. I am not.

Y. DAVIS: I just wanted to make sure that that's in the budget and when we brought appropriations here to do outreach and marketing for HIV patients it was rejected, and you're sitting here telling me that you're worried about the disease in the potatoes, but you're not about the folks who live in the State of Texas.

CHISUM: I believe you're saying that and not me. I'm just saying—

Y. DAVIS: Well, it reflects it in the budget because we couldn't get it here in the budget. I don't see that kind of effort, and we had amendments that would stay out of funds appropriated to the health department that we wanted to do marketing and outreach, so that folks could be informed about HIV and AIDS, and it was rejected on this house floor, and you bring in a budget to protect the potatoes? I just wanted to bring that forward because I think members need to know that. As it relates to this, I'm just curious to know where is the database and clearing house related to missing persons and children? It looks like this is a new item. Where and when would this be discussed, or has there been legislation that we missed in terms of discussing this? I know that—

CHISUM: North Texas State University. They will create a database there to track missing persons as well as children.

Y. DAVIS: It's very good. I'm not rejecting. I'm just wondering was there a bill somewhere where we missed the debate or discussion, or was this only through Appropriations only?

CHISUM: It didn't come from Appropriations only. It was actually a special item in their budget.

Y. DAVIS: Well, it says it was in need of the house or senate version, so I'm just wondering if there was some legislation that reflected it that we missed.

CHISUM: I believe Mr. Geren brought that.

Y. DAVIS: Was it a bill of his, or what?

CHISUM: It is established by legislation. Mr. Geren and Senator Harris passed it in 2001. It's just funded in this, that's all.

Y. DAVIS: So, it's a program that already exists, and now we're appropriating dollars for it. Is that what you're saying?

CHISUM: That is correct.

Y. DAVIS: So they passed the legislation last session.

CHISUM: Yes, and you know how it works. Sometimes we pass bills that create programs that are not funded and we chose to fund it this time.

Y. DAVIS: Well, that's fine. It just said that it was reflected. It didn't come through either one of the bill patterns. So it had to have been outside of the appropriations and the senate appropriations, so I was just curious. What about this Texas Forensic Science Commission. Where is that going to be?

CHISUM: I'm sorry. Would you say that again?

Y. DAVIS: The Texas Forensic Science Commission.

CHISUM: The Texas Forensic Science—we actually had a forensic science department in The University of Texas. It has now moved to Sam Houston University. It was there and not funded, so we funded it \$500,000, and what that does is—the fact that we look at the forensic science to see if we have somebody incarcerated or perhaps on death row that should not be there.

Y. DAVIS: That's fine, but the problem is that it was not in need of either one of the bill patterns earlier, and I'm just wondering if it followed some legislation.

CHISUM: It's exactly the same issue. We created forensic science a few years ago and it never was funded.

Y. DAVIS: The office of civil rights multi-year commitment has been filled. Is that now complete?

CHISUM: It is complete, but we still funded it 25 million, both to Prairie View A&M and Texas Southern University.

Y. DAVIS: And my last question because I know colleagues want to ask questions. I looked at all of the bill patterns for the version versed in this resolution and it suggested that it was 24.5 percent.

SPEAKER: Members, Mr. McReynolds raises a point of order, the gentleman's time has expired. The point of order is well taken and sustained.

CHISUM: Thank you, Ms. Davis.

Representative Patrick moved to extend speaking time on **HB 1**.

A record vote was requested.

The motion to extend time prevailed by (Record 1971): 84 Yeas, 21 Nays, 1 Present, not voting.

Yeas — Alonzo; Anchia; Bailey; Berman; Branch; Brown, B.; Brown, F.; Castro; Chavez; Cohen; Coleman; Cook, R.; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dunnam; Eiland; Eissler; England; Escobar; Farabee; Farias; Flynn; Frost; Gallego; Garcia; Giddings; Gonzales; Goolsby; Guillen; Haggerty; Hamilton; Harless; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Howard, C.; Howard, D.; Jackson; Jones; Keffer; King, S.; King, T.; Laubenberg; Leibowitz; Lucio; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; Menendez; Miles; Moreno; Mowery; Murphy; Noriega; Oliveira; Paxton; Peña; Phillips; Pickett; Pierson; Pitts; Raymond; Ritter; Smith, W.; Solomons; Strama; Swinford; Talton; Vaught; Veasey; Villarreal; West; Woolley; Zerwas.

Nays — Aycocock; Bohac; Corte; Crabb; Creighton; Darby; Elkins; Harper-Brown; Hartnett; Kuempel; McReynolds; Morrison; Orr; Patrick; Quintanilla; Riddle; Smith, T.; Smithee; Taylor; Truitt; Zedler.

Present, not voting — Mr. Speaker(C).

Absent — Allen; Anderson; Bolton; Bonnen; Burnam; Callegari; Chisum; Christian; Cook, B.; Crownover; Dukes; Dutton; Farrar; Flores; Gattis; Geren; Gonzalez Toureilles; Hancock; Hardcastle; Hopson; Hughes; Isett; King, P.; Kolkhorst; Krusee; Latham; Macias; McClendon; Merritt; Miller; Naishtat; O'Day; Olivo; Ortiz; Otto; Parker; Puente; Rodriguez; Rose; Straus; Thompson; Turner; Van Arsdale; Vo.

REPRESENTATIVE PATRICK: Ms. Kolkhorst, first of all I would like to take this opportunity to thank you and all of the members of the committee who worked so hard to come up with this good appropriations bill, but particularly with regard to your interest in education. As you know, I, along with many other members in this house, have a great concern for matters about education and with that, I'd like to ask you a couple of questions that I have to be sure that these items are covered in this bill.

KOLKHORST: Sure.

PATRICK: My first question has to do with retired educators. How much does this budget increase the state's portion of the teacher retirement system funding?

KOLKHORST: We increased it by about \$635 million.

PATRICK: \$635 million increase. What is the primary intent of that increase?

KOLKHORST: That is for us to become actuarial sound in our pension fund and we increased to \$6.58 million, which is a little less than \$700 million that we'll be able to put toward our very deserving retired teachers.

PATRICK: So you're saying that the state portion increased from 6 percent that it was to 6.58 percent?

KOLKHORST: Yes, 6.58 percent.

PATRICK: It appears that there's more money in the teacher compensation package in this budget when it left this house floor. Could you talk to us about how much that increase is?

KOLKHORST: I'd be happy to. As stated in the bill, 280 million will flow to school districts through a per WADA basis, weighted average daily attendance. The 342.8 million in educator excellence, \$195 million of that will be in Subchapter N. The Subchapter O that we've talked about a lot on this house floor will be delayed to the second year of the biennium, and the net to the good is \$40.8 million in teacher compensation packages after we left the house floor.

PATRICK: Thank you. In the educator excellence funds, that Subchapter N that you mentioned, those are programs that are currently underway, are they not?

KOLKHORST: That is correct. Those are the ones that go to schools with high numbers of disadvantaged children.

PATRICK: Could you describe some of the other causes and reasons for the \$40 million increase? What are the other purposes?

KOLKHORST: Well, the main thrust of that was to honor the wishes of this house, and that we have some discretionary fund for salary increases that flow to the school districts, and so we delayed Subchapter O to the second year of the biennium for some concerns of making sure we get it right before we do that, but also we added new general revenue to that.

PATRICK: Thank you very much.

REPRESENTATIVE OTTO: Representative Kolkhorst, let me also express my appreciation as someone who got to serve with you on this article in the committee and for your leadership. Since I was not on the conference committee and there's been some discussion tonight about the special items, would you tell me, is this the highest amount of special items that we have put in a budget in Article III in the last decade, or in recent history?

KOLKHORST: No, Mr. Otto, it is not. In 1999 there was \$333.6 million added in special items.

OTTO: And what is it in this budget?

KOLKHORST: It's a \$176 million.

OTTO: So, what was that first number again that it was in 1999, 300-and-something million?

KOLKHORST: 333.6 million.

OTTO: Thank you.

ISETT: I have a question regarding Article II. I wanted to visit you first if I could. You give us a broad overview of 82 million that you put into the budget, that the conference committee added, not added, but fully funded mental health crisis services. Could you explain what your vision of that, or the conference's vision of that?

GATTIS: Let me give you a brief rundown. Throughout the session, mental health has probably been the number one request, number one priority of probably most everyone of our communities and our counties and our local law enforcement as well as our local mental health organizations. We had a study over the last two years where they identified where money could be spent, programs with how they could be spent, how that money could be split up and identified, what those dollars would be. Full funding for that would have been approximately \$82 million. Throughout the budget process, we've put in approximately what we would call partial funding, low and partial funding when it came off of this house floor for those mental health issues in a single strategy of approximately \$35 million. The senate had in their strategy \$45- to \$50 million.

When we got to conference and started working through many of the issues and looking at various things where we could identify where we could invest money that would really have the biggest bang for the buck and help the most number of people, that mental health crisis issue was our number one issue. So,

that is one of the issues you'll find where we ended up going higher than the house or the senate and fully funded the \$82 million. That is really the rider that you'll see in there and other things that you'll see is that is really supposed to be broken up basically into thirds. Not exact thirds, but three different strategies. One strategy being for those monies to flow over the state as a whole with no regard to actual population, you know looking at it as a whole to help address some of our rural issues and equity throughout there. The other portion is supposed to flow where we are having the highest occurrences of this type of problem, and we're probably going to find that more in our high growth in our city situations, and then another portion will be broken out into grant programs for specific programs that some people would be able to apply for and utilize those funds for specific things within their own communities. We envision that how this money will be utilized is that it will flow to our local communities through our mental health organizations, through our law enforcement, through our county government to allow them to come together to address those issues on a local level.

ISETT: Okay, and so even from these microphones we've had several conversations regarding this. I remember Representative Davis' bill earlier about how to deal with it, but the purpose here is to try to address the concerns we've been talking about all session.

GATTIS: That's exactly right.

ISETT: Okay, I'd like to read you quick four quick questions with regard to legislative intent. Will the 82 million of new money be used for community mental health crisis services be dedicated to services in our communities and not part of the state hospital funding?

GATTIS: That is the intent. In fact, this is one of the reasons that we created it as it's own strategy, Carl. We didn't want it to just flow into the Department of State Health Services kind of with a big black hole budget and then figure out where it went. We created a brand new strategy for this and it is supposed to flow into our communities to deal with mental health. It would not, this is not, a strategy that would flow into our state hospitals.

ISETT: In regard to the community health crisis service rider on page 62 of Article II, the rider calls for plans to be submitted to the governor, and the LBB by the Department of State Health Services describing how the crisis funds are to be allocated. Is it the intent of the Department of State Health Services to work with the local mental health authorities in developing those plans?

GATTIS: I would imagine so. I mean it is the intent of this strategy, it is the intent of what we're trying to do. To be able to bring communities and the state together to address the mental health crisis that is facing not only Texas, but probably the nation. It's something that's going to show up. We believe that by making this investment, that we will see a return on those dollars because of less people in our jails in recurring instances. It works with our diversion type programs out of our jails. It works with trying to have mobile outreach units to make sure that people are on their medications and those types of things. Because it is truly of local in

nature, meaning that how the dollars are spent and where they're spent is supposed to create and benefit local programs to deal with it on a local level. My expectation would be that the Department of State Health Services should work with all of the community level organizations that are going to be affected by this to develop the plan.

ISETT: And adding on to the plan, the intent then would be to use the local community health agencies, the local mental health authorities to manage the crisis funds?

GATTIS: I would imagine that they would have a significant role in that.

ISETT: As you may recall, we just passed **HB 2439**. It was passed by the senate and I guess it's been either signed by the governor, or it's still on his desk. It was authored by Representative Truitt. The bill defines our expectations of The Department of State Health Services and the local mental health authorities. Are there any riders, or is there any intent, that would be contrary to these expectations?

GATTIS: Not that I'm aware of.

REPRESENTATIVE CROWNOVER: Thank you, Representative Kolkhorst. It seems like our discussion has been rather fine-tuning, but I would like to offer you the opportunity to lift the conversation up and applaud the work of our committee. I loved working on the committee and serving with you, and I know the hours and hours and hours that we spent on minutiae and detail, but today I think we need to talk about the big picture. And you look at that pie chart on the first page, and I think we're all delighted to see that 40 percent of our budget goes into education, to higher education and public education, but the main thing I want to address and to ask you about is there seems to be a conversation going on here that the special items are some kind of negative thing. Now, that may be true if we were just building our own little feifdoms and kingdoms, but you have young children that some day will choose to go to a university in the State of Texas, I hope, and so I would like you to address the very positive things that we have done for all the universities in the State of Texas.

KOLKHORST: Well, and thank you, Representative Crownover. I want to reference something that Representative Branch said. He's the chairman of our new select committee, I think I see Scott Hochberg back there, he's a member of that, and Chairman Morrison and others. He talked about the future and what we have to invest in. It is imperative that this state invests in public ed and higher ed, and I think through that committee process of the select committee that Chairman Branch is going to chair, we're going to look at different formulas, and we're going to try to mitigate the need for special items in the future through a more fool-proof formula. One of the things that, I think, we want to hit on is the increase from the '05 budget. The largest part of that increase was \$261 million in formula and \$300 million in TRB debt service, and I know that all of us worked very hard on getting those TRBs for our universities. I went back and looked, and I thought about last session, and most of last session's push in higher ed was the concentration of TRB, and so I think it mitigates every other biennium, the need

for special items. You're all pushed, and I know, Representative Crownover, there is no secret, if you're listening at Texas Women's University or UNT, that you pushed me very hard on your special items. Although you didn't end up with a lot, we ended up doing a hold harmless for universities like Texas Women's, which in the end, I think when we started this session, they were \$20 million down from the previous biennium, and they will be held completely harmless. And so a lot of our money went into the formula, \$261 million, the other largest part being \$300 million in debt service.

HEF, the Higher Education Fund, this year, we funded the research development fund, that will spin out a tremendous amount for the University of Houston, for Texas Tech, for the University of Texas at Dallas, and for North Texas, and for other of our emerging, what we call our emerging Tier 1 universities. So I think that this was a substantial investment. We started at Texas Tech Med School. I know that the El Paso delegation has worked for long years for this, and so there was a big investment, and part of our thrust was also to mitigate tuition increases.

You worked very hard, Representative Crownover, for something called HEGI. To a lot of people out here, and to the people watching, what is HEGI? Higher Education Group Insurance had been funded at 90 percent since the 2003 shortfall. We have increased that to 97.5 percent for our ERS institutions, and 95 percent for Texas A&M System and University of Texas System, and that resulted in nearly a \$69 million increase that won't be seen anywhere, but that was a \$69 million if you will, special item, that goes to all universities. So I think it was a very balanced approach. We tried to be fair geographically where the money was going. Houston has a lot of med schools, more so than any other place, and so you always have to kind of look at that, and try to balance out special items in other areas, and try to do what's best for the population of the State of Texas.

CROWNOVER: Thank you, and the point I want to repeat is that I think the conversation has dropped down where we think we're all in this little turf war battle on getting money for our particular universities. That would only be true if you didn't have young people that are going to need to go to college someday. And I think we know why Texas Tech is the school it is. Because of the money that the State of Texas has invested in it. Why is the University of North Texas, with 34,000 students, the university that it is? It's because we have invested, and last time we fought the battle of the TRBs, this time we did the hard part of funding it, and I think we should all say thank you. And if it's not in your particular district, that doesn't mean that your students aren't going to be able to take advantage, whether it's in Tech, or San Antonio, or Denton, so I thank you, and I applaud you for the great work, and I think we should all go away delighted when we look and see that we spent 40 percent of our all-funds budget on something as positive as education. And we know there's no bigger economic driver for the State of Texas than higher education, also. I think it's a win-win for all of us, and I thank you and Chairman Chisum very much.

KOLKHORST: Thank you for your work on the subcommittee, and I want to thank Ms. Crownover, Ms. McClendon, and Mr. Branch for sticking with me through conference to work this budget out.

REPRESENTATIVE B. COOK: Thank you, Warren, and I appreciate all your hard work on this. I know it's taken a lot. I just have one question, and it's about the Ultra-Clean Energy project—

CHISUM: Yes, sir.

B. COOK: — that we're working on, funding the FutureGen.

CHISUM: Yes.

B. COOK: And the \$20 million funding that's going to be necessary. I can't find it anywhere in this, so I wanted to find out what the situation was, and what the intent was, with respect to the funding of FutureGen.

CHISUM: Likewise, I've been looking for that in this budget, I can assure you that it's in here somewhere, if we can just find it, and I'll be happy to go back to LBB and get them to—

B. COOK: Well, thank you. I just wanted to make sure that there was an intent to fund that FutureGen.

CHISUM: There absolutely is intent to fund FutureGen, and we believe it's a great opportunity for this state, and for the United States, and I know we have some FutureGen funding in the \$250 million research bond package that we put on the ballot.

B. COOK: Thank you very much, Warren.

REMARKS ORDERED PRINTED

Representative B. Cook moved to print remarks between Representative Chisum and Representative B. Cook.

The motion prevailed.

REMARKS ORDERED PRINTED

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

The motion prevailed.

REPRESENTATIVE HERRERO: Mr. Chisum, I want to thank you again, first of all, for the countless hours that you and the conference committee and every member has worked on this bill. I know it's a big task, and I want to ask you specific questions that pertain to the funding, as it pertains to different matters, and I will start with my first question. Did **HB 15** reduce the appropriations to CHIP by \$15.7 million in general revenue?

CHISUM: Yes, it did, and that was the result of Health and Human Services estimate of caseload, and as you well know, we have a part of the CHIP legislation that virtually says that we serve everyone who qualifies and shows up.

So if the caseloads are different, we would in fact adjust that number up, but under their recommendation, we did reduce that.

HERRERO: Is that the caseload based on 2003 numbers, or is that a projection, and does it take into account—let me let you answer that question.

CHISUM: I believe it does, and I would probably refer to Representative Gattis. I don't know exactly how Health and Human Services makes their caseload estimates, but that's the information they brought us. If you would like Mr. Gattis to answer that question, I'd be happy to yield to him.

HERRERO: I'll ask him in a little bit.

CHISUM: Okay.

HERRERO: The next question is, did **HB 15** also reduce the appropriations for CHIP by \$40 million in federal funds?

CHISUM: I suspect if you reduce the state funds, it would also reduce the federal funds, yes.

HERRERO: Do you have any reason to disagree with the numbers that I have quoted to you?

CHISUM: I do not.

HERRERO: Are there any riders, to your knowledge, that in the budget, that require any agency to contract with a particular vendor, or to give preference, or an advantage, to a particular vendor?

CHISUM: No, there is not. We were very cautious about not having specified vendors in this legislation. So if there are some in there, it was certainly not our intent. We intended to make this open to more than one vendor in every case.

HERRERO: Well can you assure, then, the members that nothing in the bill gives preference to any particular private contractor?

CHISUM: That was certainly our intent, and if you can find out where there may be some, then we would certainly look into that, but it was never our intent, and we talked about that a great deal, about how many vendors could do the special items that were in the budget.

HERRERO: To your knowledge, though, there's nothing in this bill that gives preference to any particular private vendor?

CHISUM: That is correct.

HERRERO: I'll ask you to refer to Article II, page 85.

CHISUM: Okay. Go ahead and tell me what it says while I'm finding it.

HERRERO: Well, it appears to give, let me ask you the question. Why would rider 67, in the Health and Human Services Commission, which—

CHISUM: Enterprise data warehouse?

HERRERO: Yes, data warehouse. Why would it require the Health and Human Services Commission to spend at least \$10 million in general revenue on a database warehouse?

CHISUM: Well, it matches some federal funds, and that's certainly Mr. Gattis' area of expertise, and I'd be happy to yield to him.

HERRERO: Sure, please.

GATTIS: Thank you.

HERRERO: Representative Gattis, will you answer a question.

GATTIS: I'm glad you asked this question. It's been an issue that I've been working on for two years. One of the major problems that we have within Article II, and with the Health and Human Services, is all this data that we require from all these vendors, and all these people, and all these organizations all over the State of Texas, and being able to compile them, and to be able to mine that data in an appropriate fashion with current technology, so that we can start getting information out. It's something that we, I had, we had actually put intent language in a rider in the budget last session, that the Health and Human Services is supposed to do this, actually have a data warehouse through that over the interim. They have determined that's approximately what it would cost for them to do this. This is not the only cost that it would be involved. There will actually be some federal funds that we will be able to be pulled down with regard to this, because a significant portion will be dealing with Medicaid, and being able to try to mine that data.

HERRERO: In your experience, has the budget ever indicated that it is a requirement to spend at least, to my knowledge, and it's always been in the contrary where you say to spend no more than, but I'm asking from your own experience and personal knowledge.

GATTIS: I believe that there are others in here, and if there's not, the issue was—and this is a rider I worked on, and the reason is, is because as Health and Human Services, and we worked on this, we determined that that was going to be the minimum amount for them to be able to get something up and running for us by next session, so that when we come back, we will be able to address that.

HERRERO: And when you say they, are you referring to any particular contractor?

GATTIS: I am not, and I've made it very clear with them that I know that they are currently talking with a multitude of vendors, at least three or four major vendors that they are looking at. I had them put into this language that they should contract with a single vendor in order to accomplish this, and the reason I asked them to do that is so that we can avoid the situation we got into with Accenture, where we had this conglomeration of vendors that were all kind of put together as a group up at the top, and when things started going bad, they started pointing fingers at each other.

HERRERO: Right.

GATTIS: I wanted to make sure we had one place that we could go to and hold one person accountable if they didn't get the job done.

HERRERO: But you would acknowledge, then, in your statement, that there were problems with Accenture, and the handling of the contract, correct?

GATTIS: Oh, I was one of the ones that was saying that back there in the interim. If you'll go back and look during some of our things that we had through the appropriations process, and some of the committee hearings, I was one of the few people calling them on the carpet, probably a year ago.

HERRERO: So the answer to my question is yes, then?

GATTIS: Absolutely.

HERRERO: Then knowing that you want accountability, you're not specifying a particular vendor. In other words, you already agreed that it's not Accenture. Does this reference to Maximus, then?

GATTIS: No, it does not.

HERRERO: Does it reference to any contractor by name, or individual, or reference?

GATTIS: It does not, and the intent, in any language in here, should not be taken as that, and if you want to put that in the journal, I'd be happy to do so. The intent was to make sure that what we didn't end up, because this is a very large, there's no question, it's \$10 million. This is a very large project, but when we do this, we want one vendor. They can have subcontractors, and they can do whatever they want underneath them, but we want one person whose from my part of Texas, whose rear end is on the line, so that if something goes wrong, we've got one person to go hold accountable.

HERRERO: Right, and I agree with you on that. The reason for that is because you know Accenture, you indicated that this is a big project. Accenture's contract was for \$899 million.

GATTIS: That's right.

HERRERO: And of that \$899 million, \$522 million was paid. Are you aware of that?

GATTIS: I believe that's correct.

HERRERO: And are you also aware that to this date, the work that they were supposed to do has not been carried out as expected?

GATTIS: That's exactly right, and if you will remember, Representative Rose had a bill that I've worked on, and with him as well, to look at trying to look at the integrated eligibility and where we go from here, and what we do during the interim in setting up an oversight as well as an audit, ability to audit those deals, and we'll be working on those as well.

HERRERO: Are you also aware that in the interim, to help work out some of the problems that we've created with Accenture—

GATTIS: I'm willing to do whatever I can to make it work.

Representative Herrero moved to extend speaking time on **HB 1**.

A record vote was requested.

The motion to extend time was lost by (Record 1972): 72 Yeas, 56 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Bolton; Branch; Burnam; Castro; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Davis, Y.; Deshotel; Dunnam; Dutton; Eiland; Elkins; England; Escobar; Farabee; Flores; Frost; Gallego; Gonzales; Gonzalez Toureilles; Guillen; Haggerty; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; King, S.; King, T.; Kuempel; Leibowitz; Lucio; Mallory Caraway; Martinez; Martinez Fischer; McCall; Menendez; Merritt; Miles; Moreno; Mowery; Noriega; Oliveira; Olivo; Ortiz; Pickett; Pierson; Pitts; Raymond; Rodriguez; Strama; Straus; Swinford; Talton; Thompson; Vaught; Veasey; Villarreal; Vo; West.

Nays — Anderson; Aycock; Bailey; Berman; Bohac; Bonnen; Brown, B.; Brown, F.; Callegari; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Delisi; Driver; Eissler; Flynn; Gattis; Goolsby; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Hughes; Isett; Jackson; King, P.; Krusee; Latham; Laubenberg; Madden; McClendon; McReynolds; Miller; Morrison; Orr; Parker; Patrick; Paxton; Peña; Quintanilla; Riddle; Ritter; Smith, T.; Smith, W.; Smithee; Solomons; Taylor; Truitt; Van Arsdale; Woolley; Zedler.

Present, not voting — Mr. Speaker(C).

Absent — Chavez; Chisum; Dukes; Farias; Farrar; Garcia; Geren; Giddings; Jones; Keffer; Kolkhorst; Macias; Murphy; Naishtat; O'Day; Otto; Phillips; Puente; Rose; Turner; Zerwas.

HERRERO: My next question was are you aware of as a result of the problems created with Accenture's contract, and the termination of that contract, that now Health and Human Services is having to enter into emergency contracts?

GATTIS: I can't hear you.

HERRERO: Are you aware that because of the problems created with Accenture's contract, and the termination of that contract, that the Health and Human Services Commission is now having to enter into emergency contracts with Maximus?

GATTIS: They are having to enter into some emergency contracts to be able to deal with the situation. I also know that you'll find in this budget that we had to increase significantly their FTEs for Health and Human Services Commission so that they could take people back on to address some of these issues. We've also increased their funding, with regard to IT and some other items, to be able to address this failure of this vendor to accomplish what was in their contract and what they were required to do.

HERRERO: Are you aware that the emergency contracts signed between Health and Human Services Commission and Maximus, which is a 60-day contract, is for \$14.9 million? Are you aware of that?

GATTIS: I'm not aware of the exact numbers, but that wouldn't surprise me.

REMARKS ORDERED PRINTED

Representative Herrero moved to print remarks between Representative Chisum and Representative Herrero and Representative Gattis and Representative Herrero.

The motion prevailed.

HB 1 - REMARKS

REPRESENTATIVE EILAND: Mr. Speaker, members, I'm speaking against the bill, and I'm encouraging everybody to vote no on this bill for a couple of reasons. Other people have different reasons, I have two very specific. When this bill came to the house floor, Ms. Kolkhorst stood on this front mic and told you that there were two holes in this budget. One was TSU and one was UTMB, in my district. And that hole for my district still exists. My district, UTMB, the state's indigent hospital, we are \$16,000 below where we were in 2002. Sixteen million dollars, excuse me, \$16 million, 7 percent below where we were in 2002. During the debate on **HB 1**, I told everybody how that when the tobacco settlement came down we were 70 percent of the damages that the state used to get that money, and we were about 3 percent that was awarded the money. That kind of an inequity cannot continue to exist and expect this institution to flourish. UTMB in Galveston has been the state's indigent care hospital since the 1800s—and they have been funded—and the health related institution since 2002. Mr. Branch's medical institution, UT Southwestern, their funding has been increased by 35 percent. Good for you people in Dallas, 35 percent increase since 2002. UTMB has gone down 6 percent. We cannot continue, Mr. Turner, I know that you know this, to continue to serve the indigent and the uninsured with that kind of funding. We cannot continue to do this.

Second, what about where could the money come from? Go find the money. State money is less than 30 percent of our funding. Here's where the money should come from. UTMB earns for the state \$85 million a year. Since 2002, we have earned the state \$443 million in disproportionate share funds from the federal government. You know how much we've gotten of that? Zero. It's a shell game where we, through intergovernmental transfers, show the state—every other hospital in this state does the exact same thing—they show, they transfer their money, their indigent care to the state under disproportionate share programs. The state shows it to the federal government, the federal government matches it and sends it back. But what happens to UTMB and two other hospitals is that the state strips off the federal money and keeps it. And we get nothing. \$443 million that UTMB has earned this state since 2002 and we've gotten nothing, except 7 percent cuts. We cannot continue to operate a first-class medical institution with that kind of funding.

And I vote no—that's why Senator Janek was going to filibuster this bill. If I could filibuster it I would, but we can't do that in the house, the time doesn't allow it. Senator Janek was going to filibuster it, I don't think he's going to now because that is a local issue and for senators, filibustering, killing a budget over more of a local issue than a statewide issue is not really how they operate, but if I could, I would because this institution is getting, programs are going down. We have three programs that if they get discredited, the prison system is going to have to contract for a huge amount of money to serve the prisoners if we don't have these three programs to serve the prisoners. And that would cost more than what we're asking for. So I'm voting no for those reasons. If we could keep our disproportionate share money, that would be \$85 million a year extra, that's \$170 million a biennium. You could keep the unclaimed lottery prize money, you could discount the money that's spent locally because Galveston County doesn't have a hospital district. You could keep all of that and we would do a lot better.

Now the statewide reason I'm voting against this bill, is just like in 2003, I am tired of lying to our school children. I'm tired of lying to our school children. We had a record surplus this time, we had enough money to fully fund Texas grant scholarships, and we're still not doing it. Forty percent or less of our students that qualified for Texas grants are not going to get them. We need to either change the statute and say if you take the recommended course level and you make the passing grade that we tell you to, you might get a Texas grant. Forty percent of you that qualified will get a Texas grant. We ought to take it out of our statute because we're not being truthful to our students. That happened in 2003. I voted against the budget then because of that and I got up here and spoke against it. You would think that by the time we get here in 2007, with the record surplus, when we're setting aside \$3 billion to future property tax cuts, either stop lying to the children of the state, the high school students of the state, or we would actually follow through with our promises. If you look, there's about 188,000 kids eligible to receive Texas grant scholarships. Sixty-one thousand of them are going to get it. And that is not very good and that is not truthful, and we ought to fix that, but we didn't, even though we have the money. Please vote no on this budget. This is only two of the reasons that I would suggest you vote no.

REPRESENTATIVE BRANCH: Mr. Eiland, I wasn't going to stand up and speak but since you invoked my name, I at least wanted to make sure we put—

EILAND: I congratulated you for being able to get the money.

BRANCH: I thank you for that, and you did mention the dispro discussion, at the end you threw in the unclaimed lottery proceeds. What percentage of those for the whole State of Texas go to UTMB?

EILAND: Well, there's over \$50 million per year in unclaimed lottery prize money. UTMB gets \$10 million of that, and if you gave us our dish, you could keep that, and I'd be very happy.

BRANCH: And you mentioned that, but it is important for everyone to know that instead of those going back to education, which is something that I've wanted, that unclaimed lottery proceeds from all of Texas for our lottery program, \$10

million goes directly to UTMB, not to the school children of the State of Texas. And also—

EILAND: And the rest goes to GR; some of it goes to trauma fund care.

BRANCH: That's right. That's right, we've fixed that, I think, in '03 or '05 is where we adjusted that. But one could make the argument that that shouldn't be going to UTMB, but should be going back to the K-12 education program, as a lot of our citizens think that all lottery proceeds go to. And the other point you mentioned, at least briefly, at the end of your remarks was that Galveston, although you call it the state's indigent hospital, and at one time it was because that was the largest city in the state at the turn of the century, the 19th to the 20th century, now there is no county hospital there, is that correct?

EILAND: There is no county hospital there. They have contracts with just about every county throughout the state and last year, treated indigents from, I believe, 240 of the 254 counties, something close to that.

BRANCH: Are you aware that where the predominance of those indigent care patients come from?

EILAND: The predominance of them come from Southeast Texas and probably about a 14-county region.

BRANCH: And the predominance of that comes from about three or four counties surrounding your county and Harris county.

EILAND: Correct. Harris County, Galveston, Brazoria, Jefferson.

BRANCH: So there is one view that you don't tax your local citizens like a lot of the other metropolitan areas do.

EILAND: We tried to pass the sales tax. We came to the state and asked in 2001 and in 2003, please let us pass a county sales tax that would go to fund it, and we were denied.

BRANCH: So again, I have huge—

EILAND: We're trying to solve that problem.

BRANCH: I have huge respect for you and I have huge respect for UTMB. I understand some of the struggles they've been going through and we tried to work on that, but there is sort of counterbalancing arguments because there's not local taxation for what is, in many ways, a county hospital that other citizens are paying for, their local county issues, and because of the contract with the TDCJ and because of things like the unclaimed lottery proceeds, there are a lot of state dollars pouring down into UTMB.

EILAND: Yes, but the TDCJ money goes strictly for the care of prisons. That does not go to anybody else. That's very clear in the contract. You cannot spend those TDCJ dollars on anything else—

BRANCH: No, but it applies—

EILAND: No, the TDCJ hospital has bricks falling off of it, we can't use other money on that.

BRANCH: I know, that's right, but it helps with the overhead of running the operations of the hospital down there. I just wanted to make sure we had a balanced view of the situation down there and I understand and I want to work with you and try to be more helpful to UTMB, but I just wanted to make sure we had a full airing of the sources of funding from the state.

EILAND: And people since 2003 have been saying they want to work to solve the funding issue, but nobody has. That's why Senator Janek is doing what he's doing. That's why I'm doing what I'm doing.

HB 1 - POINT OF ORDER

Representative Talton raised a point of order against further consideration of **HB 1** under Rule 8, Section 4 of the House Rules on the grounds that the bill would change general law.

(Gattis in the chair)

BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, House List No. 48).

(Speaker in the chair)

HB 1 - (consideration continued)

The speaker overruled the point of order, and had read the following statement:

Representative Talton raises a point of order against further consideration of the conference committee report for **HB 1** (the General Appropriations Bill) on the grounds that the bill violates Rule 8, Section 4, of the House Rules. Specifically, the point of order claims that the bill makes changes in general law. Rule 8, Section 4, states that general law may not be changed by a provision in an appropriations bill.

Under the enrolled bill doctrine almost all procedural requirements of the House Rules and even many constitutional procedural requirements applicable to the house of representatives may be effectively enforced only by the house. However, Rule 8, Section 4, is different. It is a substantive requirement on what may be contained in a general appropriations bill and furthermore it is a requirement that may also be enforced by the Texas courts and the attorney general. The duty to enforce this substantive requirement is a shared duty. This is because Rule 8, Section 4, is in its practical effect identical to Article III, Section 35a, of the Texas Constitution (the constitutional "one-subject" or "unity of subject" rule). Article III, Section 35a, reads as follows:

(a) No bill, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject.

As applied to a general appropriations bill, the Texas courts and attorney general opinions based on court opinions have long made clear that under Article III, Section 35a, the subject of a general appropriations bill is the appropriation of state funds. Only an appropriation or a provision incident to an appropriation, such as a provision that details, limits, or restricts how appropriated money may be spent or that imposes certain reporting or accounting requirements in connection with an appropriation, fit within the bill's one subject of appropriations. A provision of a general appropriations bill that actually changes general law, for example by directly setting the amount of a fee or transferring money from a dedicated fund to an undedicated fund, is not within the bill's one subject of appropriations and therefore violates Article III, Section 35a. Therefore Rule 8, Section 4, of the House Rules and Article III, Section 35a of the Texas Constitution are identical in their effect.

The precedents readily available to the chair indicate that Rule 8, Section 4, has been applied to strike an amendment to a general appropriations bill and to strike from an amendable version of a bill a provision that changes general law in violation of Rule 8, Section 4, and Article III, Section 35a. There are many examples of attorney general opinions and court cases that likewise invalidate a provision of a General Appropriations Act without invalidating the entire Act. However, though it is probable that a point of order under Rule 8, Section 4, and Article III, Section 35a, could have been raised against some previous conference committee reports for a general appropriations bill, the chair is not aware of a circumstance in which a point of order under Rule 8, Section 4, against further consideration of an entire conference committee report for a general appropriations bill has been made and sustained.

Under Rule 8, Section 4, the chair in response to a proper point of order may effectively invalidate a portion of an amendable general appropriations bill or substitute bill that is in violation of that rule and Article III, Section 35a. Under Article III, Section 35a, the courts in a proper case and the attorney general in response to a proper request for an opinion may effectively invalidate a portion of a General Appropriations Act without invalidating the entire Act.

However, under Rule 13, Section 12, a conference committee report is not subject to amendment but must be accepted or rejected in its entirety. Based on long practice in this house and by the attorney general and the courts, the chair does not believe it is the intent of Rule 8, Section 4, and Article III, Section 35a, considered together, to invalidate a general appropriations bill or General Appropriations Act in its entirety.

Additionally, as a general matter given the time available to deal with a bill as large and complex as the conference committee report for the general appropriations bill at the end of a session, there will not be time to properly determine whether a provision in a general appropriations bill makes a change in general law. What appears to be an invalid imposition on a state official of a general law duty may be a valid condition precedent to spending appropriated money, or a valid though non-binding expression of legislative intent, or a valid reporting or accounting requirement incident to an appropriation. For example, the provision cited in Mr. Talton's point of order regarding the fees set by the

Residential Construction Commission may be construed as an expression of legislative intent that the fees be set at the maximum amounts allowed by statute. In addition, a provision that is indeed general law may not make a change in general law because it is surplusage, it repeats a provision that already exists in law. There is more time to properly deal with these matters in the house of representatives when the general appropriations bill is at an earlier stage in the legislative process.

Accordingly, the chair declines to sustain a point of order under Rule 8, Section 4, against further consideration of an entire general appropriations bill that is before the house in the form of a conference committee report that may not be amended when the courts in a proper case of the attorney general in response to a proper request for an opinion may under Article III, Section 35a, invalidate any individual provision of the bill that is in violation of Rule 8, Section 4, and Article III, Section 35a.

Accordingly, the point of order is respectfully overruled.

PARLIAMENTARY INQUIRY

REPRESENTATIVE TALTON: My question Mr. Speaker, will you recognize me to appeal the chair on the ruling?

SPEAKER: Mr. Talton, you are recognized to appeal the ruling of the chair only pursuant to your point of order raised on the committee report on **HB 1**.

TALTON: Yes sir, and I have the 10 signatures.

(Speaker pro tempore in the chair)

SPEAKER PRO TEMPORE: If all members will please be seated. Let me again ask all members to please take your seats.

HB 1 - APPEAL OF POINT OF ORDER

Pursuant to Rule 1, Section 9 of the House Rules, an appeal was made to the chair's ruling in the above point of order. The question on whether the chair's ruling should be sustained was before the house.

REPRESENTATIVE COLEMAN: The other day when there was a debate on whether or not a provision of general law would subject the appropriations bill to a point of order, it was used on this house floor to say that it was reason for removing a provision of the budget when the budget was reopened. My question is, even though that would have been the case, isn't it very clear now that a point of order is not sustainable under the rule that was laid out and whether or not that provision would have basically dumped the appropriations?

SPEAKER PRO TEMPORE: Representative Coleman, that matter is certainly not before us today. The question before the house is whether or not the chair's ruling would be sustained.

COLEMAN: I'm trying to understand whether or not a provision, as was brought forward, that was a matter before the house and was used in a debate to say that it would jeopardize the appropriations bill, something that was a matter of fact or was a matter of speculation.

SPEAKER PRO TEMPORE: The matter, Representative Coleman, with all due respect, is not before the house at this time.

REPRESENTATIVE PHILLIPS: If Mr. Talton prevails on his request, that means that **HB 1**, the budget, is not passed, is that correct?

SPEAKER PRO TEMPORE: That is correct.

PHILLIPS: And would the resulting of that be a special session?

SPEAKER PRO TEMPORE: We can't speak for certain, but that is more than likely.

REPRESENTATIVE TALTON: Thank you, Mr. Speaker, members. As some of you know, this is my eighth term that I've been in this house. As an attorney, laws and rules are important to me, which is one of the reasons why I have the time to read bills. And I read the bills, and I read the rules. When I first came to this house, I read the rules. It's important for each and every one of you that are new here to read the rules and to go by the procedures that we have. I love the house, I love the process that we have. As you know that some of this process, some believe that the process has been changed and is not being operated properly. But to me, the rules are extremely important. It's important to know the rules, and to go by them. I call the points of order and I study them, because that's what I do for a living. I've always done that—those that are lawyers here do that. That's what we do. That's why we're able to debate, those of us that do litigation, or have done litigation—we do that. And you expect that from us when you have the time to do that.

It's bothersome to me when you have a rule and then you are not allowed to have the interpretation. For example, this point of order that we're talking about. This point of order is on Section 8, page 70. And we're talking about the residential construction commission, it's in the Property Code, in Section 416. It talks about the fees, and in the fees, it says that "the commission shall establish a fee schedule that takes into consideration the unit volume or dollar volume of potential applicants." The amount they can go up to for an original certificate of registration does not exceed \$500 and for a renewal of a certificate of registration is \$300. In the bill, there's two places—a home registration fee it says "may not be set below the levels in place as of May 1, 2005." Secondly, on page 70, that was on page 69, the builder's registration renewal fee collected by the residential construction commission shall be set at the statutory minimum. But when you read it, the (b) section allows the commission to set the fees. And that's why I raised the point of order. It's pretty simple. It says shall be set at the statutory minimum, which is \$500 and \$300. It doesn't give the commission any statutory authority to set anything else other than \$500 or \$300, which is why the point of order was raised.

Also, back in the 2003 budget, a similar type of ruling was set by an amendment, which was put out in this point of order. We have rules and laws that we go by, and as a civilized society, we're supposed to go by them. We can't give up to tyranny or we can't give up to arbitrary and capricious rulings that we have in the house. Or under rules, or as a society we can't do that. If so, then we are

not the democracy that all of us had grown up to know and that we've learned in history from the beginning of the time of this country. From 1876 forward, we have struggled as a nation, we have struggled as people to try and be a country that's by rules and laws. And rules and laws have to be above any single person, or groups of persons. And that's the concern that I have in my time that I have here. With all due respect Mr. Speaker, I will now, at this time, withdraw my point of order. Thank you.

APPEAL WITHDRAWN

The appeal to the ruling on **HB 1** was withdrawn.

REMARKS ORDERED PRINTED

Representative Martinez Fischer moved to print remarks by Representative Talton.

The motion prevailed.

REPRESENTATIVE COLEMAN: Thank you, Mr. Speaker and members. First of all, there are some provisions of this bill I think were done very well. I worked very hard with Mr. Davis to put the \$82 million for mental health. I don't know exactly because I don't have any notes with me whether or not that fully restores the dollars that were cut in 2003. I don't think it does, but hopefully it does. But that's the basis of my discussion with you and why I think it's important to vote no on this bill. Not the mental health issues but it's about issues of time.

Now, in 2003, I guess you could say a 20 foot hole was dug and the needs of the State of Texas were reduced by that 20 foot hole, the money that pays for those needs. Since then, there's been a little bit put back, and a little bit more put back there, and a little bit more put back there and now the hole is only 10 feet deep. But the people's needs and the dollars necessary to deal with those needs have not even gotten them back to ground level. And since the 2000 budget was adopted, that budget cut the funding down to probably per capita levels that are more like a fiscal year in 1999 or fiscal year 2000. This budget writes a 2008-2009 budget. The population of the State of Texas has grown. And in the time that the population of the State of Texas has grown since fiscal year 1999 or fiscal year 2000, clearly the needs of the people of the State of Texas have grown with that population. The problem is the budget is still below ground level of the necessary fertilizer to make sure that individuals can grow or the necessary dollars to make sure that individuals lives do not get worse. Sometimes it's an illusion that things are better as opposed to the reality. And so, again, if you're in a 20 foot hole, and now you're only in a 10 foot hole, and the whole world is at ground level, you really haven't gained that much back to where you started. Or time has just gone by and people just get less because the budget has stalled and remains below the level necessary to fund people's lives.

There's another concern I have, and I've talked about this stuff all session but I think it's important—middle income families. Most people in Texas started off in a rural area, their families were probably what we would call dirt poor, and Texas made it possible for people to go and get a higher education by having very low tuition and having schools that were available in different parts of this state.

And in doing so, even if you didn't have a lot of money, and even if you couldn't get a loan, and even if you didn't get a Pell Grant, somebody could send their children to college based on the money they made scratching the dirt. And now, with taking away that low tuition, the responsibility is on scholarships, Texas grants, but the scholarship money doesn't even come to the same level funding the number of students that could use it before. And then those families that need to go and send their kids to school that are a nurse, a firefighter, married, or a police officer, or whoever it might be, they make over \$80,000 a year in family income, and they have to pay full freight, the whole full cost of tuition at the schools in the State of Texas. I'm not talking about people who make under \$25,000 a year, I'm talking about people who believe they have succeeded in the American Dream, and they're trying to figure out how they're going to send their kids to college.

Now there's a guy, who I don't think liked me very much, and I don't blame him, because there's a lot of people who don't like me. But he came into my office and we had a discussion and he said to me, "I've got four children"—he happened to be a news reporter, TV, so he did okay. He said, "I've got four children—one of them is starting college now, and I'm trying to figure out how I'm going to put all four of my children through college. And before, tuition was reasonable, but I'm not so sure now that I've done everything that I can do that I can actually pay for my children's college education." This isn't a poor guy, this is just a guy who thought he had gone out and done everything he needed to do, and you should have seen the look on his face. The look on his face was that he was absolutely defeated. And defeated by the actions of the State of Texas. We had \$3 billion that we could have spent to help this guy out, to make sure that he could afford to pay for his children to go to school. No, he wasn't poor. But none of that money went to reduce or freeze the cost of higher education so that his children could succeed. The man, he's got to be 55, 65-years-old, trying to figure it out. And the thing that I could never understand was why we would reverse our policy of making sure that people who are either scratching the dirt or done everything they know how to do to make their family successful, make it harder for them to succeed, but make it easier for people who already have money to succeed. I believe we ought to make it possible for people who have children that it's their first time in college, the first child in that family to go to college. But we shouldn't make it so that there can never be another child of that particular family that can go to college either. Because if they do well enough, then they'll make too much money, but not enough money to send their own children to college. And that is not the Texas way.

The other one is my district, and I will tell you, there was some confusion about Texas Southern and the vote on the floor the other day, and I respect the will of this house if I get the ability to do a run on the floor with whatever it is I'm trying to do. But, I have been in this legislature for 16 years and Dianne Delisi, you know, in that 16 years that at different times that I fought very hard for Texas Southern University. I had done everything that I know how to do to make sure that the school is strong and independent. I've even risked being the one to do that and have to pull it back because things got right. But when what I believed

was a provision in the budget to protect the school's independence and future, that gave that university and all of us the ability to know what success or failure was and gave a year's period of time in order to determine that. When the budget was opened up after it had been gaveled closed to remove that provision, I wondered immediately what we were doing here and why the whole budget had to be opened up to remove that provision. We were told it would cause a point of order on the budget. But clearly that point of order would have been overruled.

What I'm saying to you today is higher education is extremely important to the future of this state. And it's important to the people in my district as well. And it's important to the people who go to the schools in all of our districts as well. But I would hope that you would understand that I respect you when you fight for what's going on in your district, and I think that this appropriations bill should respect all of the needs that we have. And I hope that you would help me over the biennium, the interim, make sure that Texas Southern University is protected because **HB 1** does not do that.

The other thing that I would ask you to do is to continue to look at how the budget has been used this session and whether it has been used for good or it's been used for politics. And I know we're in politics. But in the final analysis, what the budget should be used for is to improve the State of Texas. So I hate to vote no on this budget because I think there are a lot of improvements to the world, in this budget that we live in, and in Texas. But folks, it doesn't get the State of Texas back to ground level. And to me, that's just not acceptable. So I would ask that people who feel the same as I do to vote no on this budget because, although a lot of good work has been done, and Mr. Chisum has worked very hard, and other people have worked very hard, I don't believe that it is the measurement of what's good for the State of Texas to still have us in a hole in the ground. And so I'd ask you to vote no.

REPRESENTATIVE PITTS: Mr. Speaker and members, I rise to speak to you about this budget and how much it concerns me. But before I begin, I want to make it clear that I have nothing but respect for Chairman Chisum, members of the Appropriations Committee, and the members of the conference committee. Warren and Omega Chisum have been personal friends of my family for 16 years, and I'm proud to call them friends. Members, I've served on Appropriations for 10 years, and I've been in Chairman Chisum's shoes, so I understand the enormous pressure that he faces today.

But members, I feel I owe it to you to say something that many of you already know. This budget has grown out of control. It is full of wasteful and unnecessary spending, much of it placed in the budget over the last two weeks. The total price tag for **HB 1** is \$152 billion. Compare that to the size of **SB 1** passed on May 29, 2005, \$139.4 billion. Members, that is an increase of \$13.1 billion. And Sid, when you go back home, you'll have to explain that to your constituents. General revenue alone went from \$65.6 billion to \$73.9 billion. This is an increase of \$8.3 billion, a 12.6 percent increase over 2006-2007.

But the cost of **HB 1** only gives you part of the picture. To get the full picture of what Texas and Texans will spend next biennium, you have to combine three bills. When you combine the cost of **HB 2**, which is \$14.2 billion, and the

cost of **HB 15**, which is \$150 billion, you have a true picture of what the 80th Legislative Session has spent, and that is \$166.8 billion. The spending in all of these bills will count toward the bottom line of this budget, regardless of how the charts and the graphs we have been given would like to spin it. Members, when we go home back in our district tomorrow, we'll have to face our constituents in the eye and be honest with them about our budget. We'll have to tell them that the number is \$166.8 billion, a \$27.4 billion increase from what we passed in May 2005. We'll have to tell them that we spent \$80 billion in general revenue, \$14 billion more than we passed in 2005. Members, I think that's too much money.

When this bill passed the house in March of this year, it totalled \$150 billion. We agreed to spend \$72.5 billion in revenue. But members, we did many good things in that budget. We gave our teachers an across-the-board pay raise. We increased funding for public and higher education. We restored rates for medical providers. These were all worthwhile things that needed to be done. But, members, we left \$4 billion on the table, for property tax reduction, as provided in **HB 2**. When the senate passed their version of the budget, they spent more than us. They also did some good things, like appropriating money for a lawsuit settlement. The senate left \$3.5 billion on the table to deal with property tax relief.

When the conference committee began to meet, we were given assurances that the will of this body would be respected and taken into account, that our conferees would hold the line on spending, and that at least \$3 billion would be reserved. But here we are today, with a budget bloated with special items for a few members that are so costly that now we have only set aside \$2.5 billion. We're all aware of the items that were frantically doled out late at night over the last week-and-a-half over higher education. This budget increases one university 97.6 percent, a \$28 million increase and that is University of Texas at Permian Basin in Odessa. The city of Midland and the surrounding areas alone received \$32 million in this budget. But this doesn't begin to cover the local parks, the museums, the water utility lines, the helicopters, and other special programs that were placed in this budget. We only need to look at Article IX of this budget to see other items that were placed in the budget. You can look here because this budget was held open so long to continue to add items, to add spending. This was the only place available for the LBB staff to fit them in. For the first time in my memory, the final pages of Article IX have blanks. Blanks, because the conference committee had to meet on Friday night after 7:00 to make changes to placate several members. This bill was already being printed during the meeting and the LBB had no other choice but simply to white out these sections.

The time has come to say enough is enough. We have a duty to pass an honest, responsible budget, and members, this budget is neither of those. This budget is a waste of valuable taxpayers' resources. Members, we can do better than this, we have to do better than this. The State of Texas and Texans deserve better. Members, this is not a test of loyalty, but a test of fiscal discipline. Which test will you have to pass when you go back home to your constituents and your voters? Thank you.

GATTIS: Thank you, Mr. Speaker, members, I want to talk to you quickly about this budget and I want to rebut a few things that you've heard, and I want to talk about why you should be proud of this budget. When you talk to those that think that spending money is something we ought to do very little of, and talk to you about the numbers that Representative Pitts talked to you about—he added **HB 2**, **HB 1**, and **HB 15** all together. Let's talk about what this really does.

HB 2 is tax relief and if you want to consider that as bloating our budget I'd like to bloat it a little more. When you talk about **HB 15**, we put in **HB 15** a significant portion of what I call appropriation through litigation items. The Frew lawsuit, the Department of Justice lawsuit, which I will talk about in a minute and a few others issues—we try to make sure in the conference committee, that **HB 1** is a true reflection of the dollars that we are spending in '08 and '09. We had some arguments about whether we could move it here, we could move it there, we could make these types of things to make it seem less or more and those types of things, and when it all came to it we said no. We said it is what it is. We put the Frew settlement in **HB 15** so that the attorneys involved and the attorney general could look at one document, a simple document. As you know that **HB 1** is very difficult document to find. We can find the numbers in one place and so that our settlement the lawsuit that we are dealing with and the plaintiff lawyer and everybody could see it in one place and the judge can rule and say look, we recognize this state has made a commitment that it said it was going to make and has followed through.

Let's talk about **HB 1**. I have been fortunate to serve on Appropriations for two terms. I have been privileged to serve on the conference committee for two terms. We have an overall number of all funds increase of seven percent on **HB 1**, over last time. Three and a half percent per year. I don't know of a conservative group out there that can say that it is not fiscally responsible. It is less than our population growth as well as our growth in the state. Less, not equal to, less. And so from a fiscal standpoint, a fiscally conservative standpoint, you can be proud of this budget.

Let me talk about the other side and address Article II Health and Human Services where I served. I'm going to tell you that I'm disappointed to hear that certain members are going to vote against this budget because I worked very hard with them to do good things in this budget. From a fiscal standpoint in Article II, we have a 4.6 percent increase, 2.3 percent a year. Very small increase, but what we did was we made sure that we took our dollars that we invested and pulled down more federal dollars, utilized federal dollars that were there. Better to put them together in a package that we can actually do more in this session than we've ever done before. We restored all our rates to begin with when we started. We restored all rates for our vendors, for our doctors, for our hospitals, and all those out there taking care of those who are the least fortunate among us to the '03 rate that Representative Coleman talks about. We started there and then we increased them. And we increased them because what we have to do is we have to make sure we have an industry and we have an economy within those items that can take care of those people. If we don't increase those rates we're going to

have people that say, "Hey we've got programs for you but we have nobody to serve you." And so we increased those rates over the '03 levels. An overall increase within a 4.6 percent increase in total spending.

We fully fund the CHIP bill that walked out of this house. I gave my word to Sylvester Turner that I would defend it. Even though, you know that I stood up here and argued against the 12 verses the six months, and I still believe that, but I told him I would defend it and we did to the end, and it's still there to this day. Representative Pitts says that when the senate walked out that they solved the Frew lawsuit. You know what the senate did? They took a \$706 million that was to settle the Frew lawsuit and then they took a .249 percent cut across-the-board and all other items in Article II that took to fund it. They didn't solve it, they just threw it over there and then cut everything else. That's the reason we ended up in Article II. We had to go to house budget because their numbers were so far off it was ridiculous because all these straight across-the-board cuts. You can't write a budget that way, and we didn't. And so to say that they funded it is wrong, they did not.

The Department of Justice showed up at state schools up in Lubbock and said we've got problems. And we do. They gave a plan and said here is how we're going to fix this, you need to give us, to invest almost \$50- to 60 million in new nurses and new technology and those across-the-board in our state's schools, not just in Lubbock, but across-the-board. That was after we went to conference, and we did it.

Mental health is a brand new strategy. It's not cut from old times. It's not put in as new dollars from old times. It's a brand new strategy that says we're tired of those who have mental health issues showing up in our jails. We want them to be taken care of appropriately. We care about them and we want to make sure they are taken care of, and we're going to partner with our communities, and we're to partner with our counties, and we're going to make sure it's done right, and we fully funded the request. When you go back home and you talk with your county judges, I'm going to promise you when you tell them we fully funded your request to help you address mental health, they're going to shake your hand and say thank you. And I haven't had that chance happen many times lately from a county level stand point. All within a 4.6 percent overall increase.

One of the other items in Article II—we have a system where what you're entitled to is institutional care. That's what Medicaid entitles you to. It entitles you to go into a rest home, a nursing physicality. But we have waivers that say we don't believe that if you can accomplish that task in your own home and in your community, we're going to do that. Now that's not an entitlement. You're entitled to go into the rest home or a nursing facility, into a very high cost. You're not entitled to get dollars out into the community, and so we have tremendous numbers on our waiting list that say, "I don't want to go there. I want to stay in my home. I want to do it for less cost, not more cost." Last session we said we are going to need at least 10 percent of those people and get them off the waiting list. And actually we did more. This session we said we're going to meet at least 10

percent of that and we've done it again in this budget. An additional 10 percent, and we took care of demographic growth so that we have a true reduction in those people that are waiting for services.

I'm going to tell you that where I get crossways with some in this chamber is this. I believe that the oldest, the sickest, and the poorest among us, those who we are suppose to take care of, we should take care of them and take care of them well. Where we disagree sometimes is adding all of those other items in there. That's where I sometimes disagree on expanding in the CHIP. That's where sometimes I disagree on expanding on other items. They're valid disagreements, but I believe that we should take care of the oldest, and sickest, and the poorest among us, and we should do it right. And we have in this budget. You can vote for this budget and be proud of what it does for the people that are in your community and you can vote for this budget and be proud that you are responsibly spending the dollars of the tax payers of the great State of Texas. I've been doing this for the last two sessions. I can tell you that I am the proudest of the budget that is front of you today.

VILLARREAL: I want to take this opportunity to highlight one provision. Other members that have done a good job of speaking on what this budget does in Higher Ed and Health and Human Services. I want to talk about very briefly, the 13th check for retired teachers. This chamber voted unanimously multiple times, to have the state pay for the 13th check. This budget doesn't do that. It reduces our state contribution, not for a guaranteed 13th check, Mr. Heflin, but for a contingent 13th check. Contingent on how the fund is performing in August and also based on a potential increase that our active teachers will have to make—active teachers who have been contributing above the state for more than 12 years. In fact, this coming year with the rise and in this provision on active teachers, there will be some active teachers who, without getting a pay raise, will end up losing money because they may have to make up for the shortfall on the low performance of the fund to pay for the 13th check. Many of you like myself spoke, met with, heard from our retired teachers and we told them that we were going to do something after so many years of doing nothing to address the rising cost of everything around them and the declining purchasing power of their pension benefits. The least we could have done was guarantee a 13th check. This bill creates a contingent, maybe, depends on if you're lucky, you'll get the 13th check. And by the way, your active colleagues are going to have to pay for it.

KOLKHORST: Thank you, Mr. Speaker, members. Some of you will find this interesting. I have never closed on major bill before. Chairman Pitts, last session I was too scared to close on a major bill. I rise today because I have confidence in Article III. Chairman Pitts, you worked with me a lot last session and you threw me in the fire and you propped me up. I listened to your words tonight, you know it seems that a lot centers around Article III. You heard Mr. Villarreal, you heard me talk yesterday from the bottom of my heart, about pulling the senate off of 6.4 to 6.58. Ruth, you walked that walk with me. Vicky, I kept you informed.

There was a time when there was no chance for a 13th check. I'll be brief, so that we have a chance to vote on a 13th check tonight. It's not certain that the acts will go to 6.4. I learned a lot through the process. My colleague and friend Mr.

Noriega and I laugh about the night he swept all the incentive funds, and told Mr. Oliveira when he closed tonight and stood up here and talked about how a cup of beer was a pretty good price for a dollar and he walked up and said, "Free beer". And I got voted down and oh, how that hurt. All of you that know me know I like to win on the golf course, and I like to win in other ways. How we're measured is by what you did and that the rest of the body knows that you taught us something. The House Appropriations Committee, all 29 members of us, maybe we don't get it right when we meet all those months at 7 a.m. until midnight and we listen to you all. I went in with no teacher pay raise in the senate and we met half way, and that's what senate and house conferees are suppose to do.

That brings me to a point of so much slurring around with special items. I stayed up late last night and went in early this morning and I looked at all the special items. The senate came off the senate floor with 20 million more with special items than the house. The house equals that up at that the end. The house spent one million more than the senate in special items. The house spent 75 million and the senate spent 74.8 million, and we shared on 31.3 million. I'll sit down with any of you anytime. I remember when we took out special items and I had said this with Senator Duncan. I know I had some of my conferees in the room. We're not even going to talk about special items until the end. We have to look at the formulas and we've got to shore them up. We started and we barley looked at them and it was on Friday before Mother's Day, May 11th. I remember it well because I was coming to Brenham to see my children perform in the Brenham Mayfest. The bill stayed open for a long time but not because of special items. It stayed open because we negotiate with the governor, and he has that right. He's not a legislator, he's the executive branch. We came out with some agreements. There will be \$100 million that is going to structure the university. That closed the gap more than others for our research university. That's an exciting new program, and that's something that I agree with the governor on.

In the end, I think there's something to be proud of for everyone in this budget. I mentioned that Myra didn't get as many special items as she wanted. But we did something that I've never done before in serving since 2003. We did a 100 percent hold harmless for UTA, for the community colleges, for everyone. No one will leave this budget with less than they came in in the last biennium, the biennium that will be completed this August 31, even though many of them have lost contact hours and community colleges and many have lost weighted semester credit hours.

In the end, members, I think much like Mr. Gattis. There's something to be proud of. Mr. Pitts, I understand your concern for the size of the budget. Within that concern, we should all talk about the growth of our state. Growth is good, or at least that's what we tout. And our budget has grown less than population and inflation. I appreciate the leadership of the past, of the two chairmen that I've served under, and I certainly appreciate this chairman. Chairman Chisum, you've been a pleasure to work with, his leadership and his steady hand. Y'all know that I can be scrapped off the ceiling. He's taught me a lot, and I appreciate the mentoring that I've received. Mr. Noriega, Mr. Oliveira, your mentoring on being an important writer, teaching me that there are bounds to be struck. Mr.

Hochberg, for answering all my questions all the time, for talking to me about what we should do and what we shouldn't do and how we can meet those challenges in the future.

Members, I close tonight in saying this is the first time I've ever closed on a major bill, the first time that I've had the confidence to stand before you and say this is a good bill. I'm proud of it and I'm proud to serve with each and every one of you, even after the last two days of a lot of back and forth. We all are after one thing, and that's a better Texas. This budget is for a better Texas. Our arguments on the floor, Mr. Talton, are for a better Texas. May God continue to bless this state, and thank you for letting me serve with each of you.

REPRESENTATIVE NORIEGA: Please forgive me for coming at this late stage. We all appreciate your passion and your work ethic—we all recognize that. If you could please, just—you were recounting that evening over here and certainly your competitiveness is seen in your eyes when the speaker asked you, "What are you going to do?," and you said, "I'm going to take him." Everybody recognized that, but for the record, we knew that evening when the bill left the house, we had an understanding as a body that teachers across-the-board would receive somewhere between \$800 and \$900 as a teacher pay raise. We understood that you had to go to the negotiating table, and work with the senate's intent of putting the monies into their incentive ideas. Could you please, and I didn't get to the mic earlier, there was a long line—could you specifically articulate what the per teacher pay raise will be in **HB 1**?

KOLKHORST: Right. I'm happy to talk about that. Actually, when the house left the floor it was right at \$800, maybe less. This is approximately \$430 for the teachers—it's not technically an across-the-board, how the rider's written. As you all know, or those of you who have served on Appropriations—Mr. Talton pointed out very eloquently, you can't write general law in a general appropriations act, it is an intent rider. We have asked the school districts to report back to us on how they use the money. It will flow out on WADA, weighted average on daily attendance. It comes out to about \$430 per teacher and that will be coupled with the ongoing subchapter N money that could mean a whole lot to school districts. Mr. Noriega, the subchapter O that you also swept, we deferred that to the second year of the biennium and we reduced it slightly.

NORIEGA: Representative Kolkhorst, as you just mentioned, because you can't write general law in the bill, therefore even that \$425 to \$430 is not guaranteed to the teachers?

KOLKHORST: I think that the intent of the rider, hopefully our school districts will respect that very much. I think it goes a long way to the issue Mr. Hochberg brought up to me of discretionary funds for the school districts, that this will help them go a long way to that pay raise that I think teachers deserve from their local school districts as local school employees.

NORIEGA: And that's where I want to put some intent as it applies to your rider and I know you did the best you could. Across-the-board increase—in having the school boards report back essentially what they do with the money. In addition to

that, you mentioned in there that TEA can—you set in there to have rules but obviously you can't instruct, so maybe you can give me some idea, because the bookends now are zero or \$425 to \$430. So a school district can give a teacher nothing or \$425 or \$430? What's the consequence, so that this body understands when they go back to their school districts, and they say, "We got you a \$425 or a \$430 pay raise", and the school district does not then heed the intent of this body, and they give the teachers nothing, what do you see then as a consequence or how do we then make this body's word good?

KOLKHORST: I can tell you, It talks about, on a per WADA basis, for educator's salary increases—there are some school districts that will get more than \$430 per teacher because they have a high percentage of weighted average daily attendance, so they may see more. There are some school districts that won't receive quite as much because they don't have the WADA. Most of us in this room represent school children that are weighted, so the best I can do for you is to say we will have a report of how each school district uses that money, and that is usually a great, great incentive. Mr. Noriega, the other night when you brought me the rider that would have gone on the fiscal matters bill, I told you, let me call Ursula Park and make sure this doesn't trigger something that you or I would not want to do, that would harm the foundations school fund, or cost us more money that we had not appropriated and I was so very excited about that, because that would have given us a guarantee. But it did go down on a point of order so I think you and I have given our intent and will continue to work with the school districts.

NORIEGA: And I appreciate you working on this and I do understand that the incentive side of the money is somewhere in the neighborhood of \$342 million—

KOLKHORST: \$342.8 million—

NORIEGA: And that the across-the-board was at \$280 million and I just want the members to understand, even at \$430, if a teacher were to receive an across-the-board pay raise, that that calculates out, for the teachers of this state, at about \$6 a week, and so I—

KOLKHORST: That's what started my argument against you when we did what would have been about \$12 a week. And I know we need to consider that, but hopefully school districts will heed our warnings and also have discretionary funds on a local level.

REPRESENTATIVE MENENDEZ: I just wanted, as a fellow parent of young children, and a colleague of Representative Kolkhorst for the last three sessions on the Appropriations Committee, and someone who's also extremely disappointed in not having been able to get the same budget that we sent out of this house, come back, just thank her for her hard work, her tireless work, and her sacrifice of her family time for what she's done for this house. Thank you.

KOLKHORST: Thank you.

GALLEGO: Thank you, Mr. Speaker. There's a couple of reasons, there's a few reasons, really, to vote against the bill. There are some things that bother me. Some of those are trends that bother me. As an example, one of the trends is that in 2003, the conference committee on Appropriations met 19 times, and they spent 57 hours and 44 minutes in public meetings. This year, the conference committee on Appropriations met 9 times, and spent only 8 hours and 30 minutes in public discussion of the biggest budget that Texas has had. It bothers me that in Article X, that there are some issues about special provisions, and Article X is the article that deals with the legislature. And what it essentially says is that the provisions that all other state employees have to follow, with respect to travel, or lodging, or mileage, they don't apply to the legislature anymore. And you know, I can't tell you the level of discomfort I feel with that, because in the final analysis, I think we're all essentially the same, and we should lead by example. And we've seen the damages, trying to hold one class of offices, one class of individuals, one class of employee over and above all of the others.

But the real reason that I want to vote no is a reason that you all know very well. About two-and-a-half years ago, my life changed significantly, because God saw fit to bless my wife and me with the coolest little kid in the world, that you all know that he scampers back and forth. While I'm here in Austin, he has the privilege that few have, maybe David Farabee had it, of growing up in the legislature. You all have seen him scampering back and forth. Ana Hernandez is his first crush. He will tell you that his best friends are Fred Hill and Trey Martinez Fischer, and he is in awe of Senfronia Thompson, as I think we all are.

Nikolas turns 21 in the year 2025, and so what I have started to do, is judge everything by what will, if we do this, what will Texas look like in the year 2025. And I have come to realize, more than I ever, ever could, that Nikolas is not the only little kid out there. There's a lot of other little kids, little boys, and little girls, just like him, that don't have the privilege. I agree with Mr. Gattis, that we should take care of, to use his phrase, "the oldest, the sickest, and the poorest." But it seems to me that we have some additional responsibility. You see, I want Nikolas to go to college, the best equalizer there is out there, and this budget doesn't really do anything about putting more kids through college. Maybe Nikolas will be lucky. I'll probably be retired by then, drawing a little bit of a pension, able to help him a little bit.

But we had a discussion the other day about a scholarship program for the top 10 percent, and we talked about how \$80,000 was too much, and what happens if he—the reality is, that for middle-class people, sending kids to school, to college, gets harder, and harder, and harder. And this bill doesn't address that, it doesn't make it easier to go to college. It doesn't help us with Texas grants, it doesn't do anything about the sky-rocketing cost of tuition.

I want Nikolas to be able to go to parks, and hang out, and do the camping and the fishing, and the rafting, the rock climbing, that I did. While we heard a lot of campaign promises from a lot of people over a long span of time, we didn't really dedicate all of the revenue from sporting goods tax to parks, or uncap the sporting goods tax, and there's a lot of examples of that. We talked of truth in taxation, but TIF dollars, the TIF tax, the bill doesn't appropriate those dollars to

the purpose for which it was intended. We collected a lot of money, system benefit is an example. We don't spend it where we said we were going to spend it. I have a lot of highways in the district that I represent, that are two lane roads with no shoulder, and I'd like to fix those at some point in time, and we're not doing that. Fund 6 is an example of a fund that we use for a lot of things, and while I have no objection, I had some experience with the appropriations bill, and I have no objections to members taking home projects that are important to their districts. But in higher ed, in Article III, and in some other areas of the budget, I think we've taken that a bit far. We started doing special items for community colleges, which we've never done, really, before. In fact, as a group, community colleges told us that rather than single one community college out over another, they would rather be treated as a class, and get all their money out of the formula. We were never really able to get that out of the universities, but the community colleges wanted that.

But let's talk about those universities, because, I will tell you, that I don't mind that universities have auxiliary enterprises. If you look at UT as an example, they have a performing arts center. It's a UT facility, I have no objection, but in this bill, we're using funds to pave the parking lot for a special events center, for the University of Texas of the Permian Basin. And I don't really have an objection to paving a parking lot in a university or facility. That's not my deal, because Lord knows the parking lots at Sul Ross State University in Alpine, Texas, are also paved with state money. But usually, the parking lot that you're paving for a university with state money is in the same city as the university. Usually, the parking lot that you pave is in the same place as the institution of higher education. To my knowledge, this is the first time that that's not the case.

I look at the year 2025. How do we get there? We don't get there with a lot of special items. We get there with core values. We get there with basic, basic decisions about grant funding for the Texas Grant. We get there about basic decisions with helping universities fully fund their formula, so that all kids have an opportunity to go. We get there by helping create additional flagship universities, so that we don't have this constant battle about who gets into UT, and who doesn't. We get there by making it affordable, and accessible, for every single kid out there, like Nikolas, to have an opportunity to go to college. And this bill doesn't get me there.

I, too, will tell you that Warren Chisum and the conferees have had a tremendous amount of responsibility, and when this bill is over, and it passes, I'm going to stand up, and I'm going to give them a standing ovation, because I will tell you that that is a phenomenal responsibility, and a phenomenal amount of work, Warren. You did good. You've done well. But I, for my part, because I look at Nikolas, and I remember him scampering up and down, and I want you to know that we've got to do this for everybody. We can't just worry about one area, and we can't just worry about one subject, we've got to do it.

REPRESENTATIVE WEST: Thank you, Mr. Speaker and members. Y'all may forgive me if I get a little choked up up here, because this could very well be the last time that I stand at this mic, but there's a field of dreams in West Texas I want to tell you about. Y'all have heard some criticism about it tonight, but it came

about in 1973, and the rumor has it that the man that is now our speaker and who is being criticized for putting some emphasis on that school, fought it tooth and toenail to keep it from coming into existence. Later, as it went through its growing pains, the rumor has it that he wanted to turn it into a prison. Well, it finally took hold, and about seven years ago, we needed to repair the roof on the Mesa Building. That was the first money that had been spent on that university in probably 25 years. I look up and I see Tony sitting back here, he was one of the house members that fought hard to get that university created. That was UTPB, that you've heard about tonight. Well, I'm the only member of this house that is a graduate of that university. I was able to go back to school because it was built. It has grown, it is serving all of West Texas. It is built out on a section of land that didn't have anything around it. As the time has grown, the two cities, Midland and Odessa, have grown together almost in population. Two years ago, I guess it was last year, we got a TRB for a science building. A few years before that, we got TRBs for a library. We also, last year, got TRBs for a performing arts center. The University of Texas System had land where we have, what we have what we call the center of energy and economic development, which would lie between the cities of Midland and Odessa, and would be an ideal spot for a performing arts center, so that any time it could be used by that part of West Texas, it would be available.

Well, UTPB has had a great increase in the percentage of students, so I guess when you go from 100 students to 200 students, you have 100 percent increase. When you go from spending \$1 to \$2, you have another 100 percent increase. Yes, we've had a large increase in expenses, and a large increase in funding, because, I believe, I'm not sure on my figures, but I believe that we're serving now about a 54 percent minority in that school. So it's not just for one part of our system, it's for all of us. And we talk about the parking lot, they're having to build an off-ramp off of a four lane highway to get into it, and that's where the money is in the transportation bill. Just a bill that transferred that ramp off, and that's in the appropriations bill. And I thank Mr. Chisum, and I thank anybody that was involved in it, for helping us.

Where does The University of Texas get all their money? From West Texas, out of the oil, so it's kind of nice to be able to put something back, where a lot of it came from. And I just want to ask you, please vote for this appropriations bill, because it is a field of dreams that came about, and now that I do, I believe, that Mr. Speaker and I are working hard together on trying to make the University of Texas of the Permian Basin a viable part of our state. That doesn't mean that we're working together on everything, but when we can work together on something, we work together on it. When we disagree, we can disagree.

But those of you who know my wife, you know that she doesn't agree with me on everything, but I want y'all to pray with me, and think about me next week, or actually this week, when I go in for a full-body scan. I hope that everything works out where I can run again, and be back here, but there's a good possibility I may not be. But the possibility is, if I don't come back, she's

thinking about running in my place. So y'all just be prepared, y'all may have another West if I'm not able to come back. And thank you, members, and thank you, Mr. Speaker for the opportunity to speak.

(Speaker in the chair)

REMARKS ORDERED PRINTED

Speaker Craddick moved to print remarks by Representative West.

The motion prevailed.

MORENO: Mr. Speaker and members, let me get you back to earth. Let me get you back to earth. We're not talking about **HB 1**, we are talking about the legislature. **HB 1** is a conglomeration of the whole 140 days that we have been here. And what has developed out of this legislature? All rights have been diminished, don't kid yourself. Children in the back, new parliamentarians, why? Because the old parliamentarians were not listened to. If that is not enough to burn you up and to make you think something is wrong.

I hate to get to the mic, because everybody thinks I'm crazy. But let me tell you, I talk about life. I represent one of the poorest districts in the whole United States of America. I come from a poor family, and I don't forget where I come from, and I have a feeling that when I first came into this house, the Mexican Americans were in better shape than they are now.

You know, look at the education. Look at the 10 percent. The 10 Percent Rule was passed, was given to us, so it could do away with affirmative action, because the Mexicans, and our black brothers, were getting too far ahead. And look what we're doing with it? You cannot stop progress, you can't. We're not dumb.

Mr. Gattis made a statement, and if I am incorrect, Mr. Gattis, please correct me. The handicapped community of this city is very upset as to what's going on in Texas. The court just ordered some years back that us handicapped people should be awarded some sort of an attendant care. We've been denied, and again, if I am mistaken, please correct me, because I got this information from the handicapped community of Austin, Texas. It is much cheaper, I'll tell you, it is much cheaper to let me, in this wheelchair, live at home than it is to have me in a nursing home. Much cheaper. Much healthier, and I'll be happier, but no. The nursing home list continues to grow. To grow, and yet, we do not do anything. I am not disappointed, I am mad.

Forty years of my life I've been here, and every time the appropriations bill comes over, I get madder. I've always been at the bottom of the pudding pool. Never a chairman, never anybody. Why? Because I speak to you, and I speak to you what I feel, not what somebody tells me. I tell you, this state could be the greatest state, and it is one of the greatest states in the nation, but we are too ill-advised, too ill-advised, because the big boys still control. If I had something to say, we would not be in this situation here. Yes, I'm going to be truthful. I want a special session, and I want a war against this bill. So folks from El Paso will recall me, and they know my feelings about this bill, and they have sent word, that if I don't vote for this bill, that the Texas State Medical School is in jeopardy.

Well, let me tell you, my friends, in El Paso, to me, democracy is more important. The medical school can be started again, but democracy cannot. And look what has happened to our session. We have been denied rights in this legislative session, and a bunch of you people still think that you can't. This is the reason I am voting against **HB 1**. Not because it's **HB 1**, because it's a conglomeration of what has happened in this whole legislature, and I ask you to think about that. Think about that and vote against **HB 1**.

REPRESENTATIVE MCCLENDON: Thank you, Mr. Speaker, members. I'm not going to speak long at all, but I just needed to rise and talk about some misconceptions mentioned earlier tonight about the financial aid funding in **HB 1**. As you know, I do serve on the Appropriations Committee, and I've had the honor of serving with Chairman Chisum and Representative Kolkhorst on the Education Subcommittee. As a result of that service, I have been working with the conferees in the conference committee and I can tell you that the conference committee has added \$140 million to the financial aid programs strategy found at the Higher Education Coordinating Board above, above the LBB recommendation. The \$93 million that was added to Texas grants added will increase the number of recipients by approximately 48,000 in year '07, to approximately 62,000 in year '08, and 69,000 students in '09.

Let's talk about the Be On Time program that's really a favorite of Senator Zaffirini and probably Lieutenant Governor Dewhurst. This program is used as an incentive for those students seeking to graduate in a timely manner. The added funds for the Be On Time program will help to ease the strain on universities in dealing with career students. While it's certain that some students have extenuating circumstances that would deter them from a timely graduation, these funds and grants are to encourage the vast majority of students, many who live in districts that I represent, without these extenuating circumstances to graduate in a timely manner. Before our committee we heard, our subcommittee we heard colleges and universities talk about the increase in the tuition because we were very, very concerned about the rise and increase in tuition. We tried to address that in this budget by increasing the formula amounts to general academic institutions, community colleges, and the health related institutions as well as the 100 percent whole hommus in a direct response to the human versus claims of inadequate funding, which they claimed caused the rise of tuition. So I ask you to vote in favor of **HB 1**.

GALLEGO: Ms. McClendon, would you give me those numbers again with respect to Texas grants?

MCCLENDON: Texas grant, we added \$93 million to Texas grants. We increase the number of recipients to approximately 48,000 in '07, to approximately 62,000 in '08, and 69,000 in '09.

GALLEGO: Ms. McClendon, are you a football fan?

MCCLENDON: Absolutely. Even though I don't have a team in San Antonio, I have to support the Dallas Cowboys and my hometown city of Houston.

GALLEGO: If your quarterback gets sacked behind the line of scrimmage, and you lose 10 yards, and then on the next play, your quarterback gains 10 yards, that's not a first down, is it?

MCCLENDON: It's called a gain, and you have to start from somewhere.

GALLEGO: It's not a first down, is it? We're back to the line of scrimmage. And in fact, in fact—

MCCLENDON: I disagree.

GALLEGO: Even with the increases, we're still going to be serving 10,000 less kids because of the cost in tuition and how much more tuition costs. We're going to be serving 7,000 less kids than we served in 2003, is that not correct?

MCCLENDON: And I can tell you, Mr. Gallego, that—

GALLEGO: Is that not correct?

MCCLENDON: I can tell you that if we had not added the \$140 million to financial aid programs strategies, we'd be further behind the ball than we are today.

GALLEGO: We're going to be serving 7,000 kids less than we served in 2003, is that correct?

MCCLENDON: I can tell you that we have to start from somewhere, and we've added \$93 million to the Texas grants.

GALLEGO: Thank you, Ms. McClendon.

MCCLENDON: Thank you, we'll be getting there.

REPRESENTATIVE TURNER: Mr. Speaker and members. In serving on the conference committee, our primary area was on criminal justice. I will tell you that when we started this session—and Representative Madden, you can attest to this and also Representative McReynolds—our prison system was pretty much at maximum capacity. And based on the LBB projections, I want you to know that for the next biennium and bienniums after that we were looking at a shortage of capacity, anywhere from 6-, 7-, 8-, 9-, 10,000 people, and that number was growing. In fact, it was getting to be more than that. When we started this session, our question was whether or not we were going to build several new prisons in order to take care of that prison capacity. But the work of Representative Madden and his work on Corrections, in working with Senator Whitmire and others, we've addressed that problem in this particular conference committee report.

I want you to know when you get ready to vote, I want you to know what you may be voting for or what you are voting against. Some people say that we have spent too much; some people say we have not spent enough. But I want you to know that we have spent an unprecedented amount on diversionary programs in this budget. Diversionary programs, not building prisons, but on diversionary programs. When it comes to probation residential substance abuse treatment programs, we have provided for 800 additional beds. For probation mentally ill treatment falls in that same category. For probation outreach substance abuse, we

are serving over 3,000 people a year. For probation and community sanctions facilities, over 700. For parole and community sanctions facilities, over 700. For in person therapeutic community beds, 1,500. For substance abuse felony punishment facilities, 1,800. For DWI treatment facilities, over 500. And the list goes on and on. We are spending in this conference committee report nearly \$200 million in diversionary programs for over, nearly 6,000 beds in this particular conference committee report. If you vote for it, that's what you're doing. If you're voting against it, you're voting against these programs.

In this budget, we have restructured TYC, the Texas Youth Commission. And we have provided funding in this budget to take care of kids that are going to TYC. But we have downsized it and we have provided additional monies to the juvenile probation facility, commission in order for our kids to stay closer to where they are coming from and to provide for their needs in this budget. A substantial increase for the Juvenile Probation Commission. When you vote for this budget, and when you look at LBB's projections, that overflow that was coming into our criminal justice system has been completely eliminated for 2009, 2010, 2011, the number goes to zero. There's a rider in this bill that I don't particularly care for, and it talks about LBB building or having the right to build three additional prisons in case that may be needed. Jerry, we've talked about that quite a bit. I don't like the rider; I hope it never has to be utilized. But in this bill, in this bill, there are monies to attend to our criminal justice communities and you can go back to your districts, whether it's rural, suburban, or urban, and say that we have addressed the public safety issues of this state. That is in this budget.

But let me tell you one of the real reasons why I rise, because I've listened to people talk about this budget. And let me tell you, it's not perfect. No, it's not. And Lois, Representative Kolkhorst and Representative Gattis can say the times and discussions that we have had on the conference committee report and the discussions that I've had, the intense discussions that I have had, with people fighting for things in this budget. A couple of hours ago we passed out the CHIP program. And every dollar for CHIP is in this budget. A couple of hours ago, people were at the back at the mic asking Representative Talton not to call a point of order on the CHIP bill. I want to thank Representative Gattis for keeping his promise. Every single dollar for the children's health program is in this budget. One hundred and twenty-thousand plus kids will get insurance if they don't have it, coming from low income working families in this budget. And let me tell you, it hasn't been easy. I've had many, along with others, many conversations with this speaker, with the people on the Appropriations Committee, and yesterday, I walked over and had a conversation with the governor, the lieutenant governor. And I did something I've not done many times in my 18 years. And I pleaded with him for the children. I pleaded with him for the children who do not have insurance. And I said to the lieutenant governor that for 18 years I've been at this house, and I'm asking you to do it not for me, but for those kids that do not have it, because I used to be one.

You may want a special session, and you may want it for your own political agenda. That is your right. But for Demante Johnson, who is a member of my church, and for her mom, and for her children, and for the thousands of kids in this state who do not have it, I'll take your arrows politically, I'll take your criticisms. You can do whatever you will politically, but if that means that 127,000 kids will have insurance so that come the fall they can go to school healthy, I'll take your arrows and I'll take your criticisms. We have fought and come too far to be able to give children what they need. And it's not a democratic agenda. It's not a republican agenda. And it's not about trying to get a political advantage, or trying to get a leg-up on a speaker's race, or anything else. It's about the people and the children in the State of Texas. I will not vote no on this budget in order to come here in a special session to achieve somebody else's purpose. You can criticize the budget all day long, but if 127,000 kids who are uninsured today get insurance from this budget, I'll proudly vote for it, and I'll proudly defend it, and like I told Demante's mother at the funeral, I'll go back to Austin and I'll fight with everything that I have. And if I have to beg people for it, then I'll do it. And yesterday I did it, and to tell you the truth, I'd do it again. I'll vote for this budget, not for the speaker, not for a special, not for the governor, not for the lieutenant governor, and not for you. I'll vote for it for children who need insurance, and they are depending on people like you and I to give it to them. I shall vote yes, and I'll vote proudly yes.

REPRESENTATIVE Y. DAVIS: Thank you, Mr. Speaker and members. Thank you, Speaker Turner. We appreciate your comments. Rule 13, Section 9(a)(4), added text on a matter which is not included in either the house or senate version of the bill. Rule 13, Section 9(b)(3), took exceeds the highest to be less than the lowest. Rule 13, Section 9(a)(1), to change, to alter, or to amend text not included. That's the problem that I have with this budget.

When the budget came to us earlier on, we were told there was a \$12 billion surplus. We all thought there was a surplus. We were told that there was \$4 billion set aside that we couldn't appropriate. When the budget came to us we were told that we needed to make sure that our amendments or our items we brought forward, that there was funding for it.

While I applaud what Representative Turner said with regard to 127,000 additional children being able to get health insurance, I certainly support that. I applaud what we've done to make our community and state much safer. I certainly don't want anymore prisons built. But Rule 13, Section 9(a)(4), that says matters included in the budget that were not before either house. As a member of the legislature who came here with the intent of trying to represent her district, it bothers me that we can have a budget process, or appropriations process, where it ends up that we get a budget brought to us with a resolution that asks for that kind of authority, when members during the budget process could not make amendments or get amendments on. And I'm going to point to a particular one because I think it's important that we recognize the process is critically important. Because this budget, while it does have some good, something in it that I really think we need to be supportive of, it has some awful stuff too. And I don't think you get to just talk about the good stuff if you don't talk about what we could do

better. And so I want to take a minute to talk about how we can do better, and it's called working through the process where every member of this legislature gets to have an opportunity to put things in the budget and it be seriously considered. Because I've got to think that this legislature could not possibly think a Zebra Potato is more important than the people in our districts. I've just got to think that that is not what this body is about, that they can justify voting for a budget that has \$1 million for marketing outreach for a Zebra Potato, a disease that's in potatoes. And they don't see the irony that we tried to give money to outreach for HIV victims to do intervention and education to save human lives. That's why I'm standing up here; I'm going to be perfectly honest with you. I'm insulted. I'm insulted to see a budget come before us and you all know it's an outrage that we could justify marketing dollars to look at a potato. And we couldn't get marketing dollars—and you people out here didn't support it either. Larry, you knew when you jumped up on my outreach, you talked about how it was not germane. I appreciated that. But at the end of the day we have a bill here before us that gives you \$1 million to market the Zebra Potatoes.

Now I've got to tell you something, people. Rule 13, Section 9(a), asking for something that wasn't included in the house or senate versions, and this is what we get? That's just flat out pork. So we've got a budget with all this pork and now potatoes. And folks from my district can't get things to help them. When you're talking about the kinds of things that are put in there for special individuals—you know, I know that this is about a balance and sharing. And if you're on a committee, you're smart enough to figure out how to get things in. But when you get so isolated and so narrow that you only care about certain things and you forget about the certain parts of the entire state, that's when it's a problem. And it's because the process is broken. When members are trying to provide input, if it doesn't come through a certain way, it's not accepted, because it's not a good idea because it didn't originate somewhere else. When we're told that you can't appropriate \$14 million, it's set aside; when we tell retirees that we're going to give them a 13th check, when we don't; when we tell teachers that we're going to give them a raise, but we don't, we give them a maybe raise—you know, the process is messed up here, members. It really is about how we entertain how everybody participates and be a part of this process. And I can tell you that if our process lends itself to having Hildago get a new drug treatment center, the state care center in South Texas, the forensic service down in Sam Houston, in Lois's district, and the automated registry in the Rio Grande Valley, border security for DPS, all those special things might very well be needed. But when you miss it and let \$1 million go to the Zebra Potato, and folks can't get health care, people can't get marketing dollars to help deal with how to have a safer life, something is wrong with this process. Because as a member of this legislature who's brought this issue before us, I don't know how we don't, how we're comfortable with this. When we can take out a local park, the special parks—you know, I worked, I used to be on appropriations. The local parks process worked very clearly that if cities applied through competitive grants to get parks, they got parks based on the merit of their grants. Now we've taken \$16 million and set it aside so that they are already identified that they will get park money. So all of us

don't have a fair share or a fair opportunity after those park dollars. They've already taken \$16.685 away so that there no competition, those people are going to get those parks without any regard for the rest of us going through the competitive process. That's just not fair.

The process is broken when you can have Rule 13, Section 9(a)(4), Rule 13, Section 9(b)(3), where you're adding text that's not included in any budget, where you can exceed the highest and be less than the lowest, so you never know what the budget is. Something is wrong, members, when Rule 13, Section 9(a)(1), says you can change an author or amend text. Something is wrong with the budget process. Maybe this isn't the time, maybe we don't want to come back for a special session, maybe everybody's been, but I will just ask you when will we fix it? When? When are we going to start dealing with how everybody gets to participate? And clearly how everybody takes a little more responsibility about what's going on in the budget because I can tell you, if you can go home and justify \$1 million for a marketing for Zebra Potatoes and you couldn't for HIV intervention and education, you need to find somewhere else to live.

REPRESENTATIVE MARTINEZ FISCHER: Ms. Davis, I appreciate your remarks. You made me think, going back in time when we debated **HB 1**, and I'm reminded of the layout provisions of our amendments that we had to prefile amendments. And there was the calendar rule that we couldn't spend any money. Do you remember that?

Y. DAVIS: Yes, I do.

MARTINEZ FISCHER: And what you're telling me, and telling the body, is that we abide by these rules with layouts for amendments, we have to have revenue neutral items, we can't spend money, we can't take away money, but under Rule 13, Section 9, we could spend hundreds of millions of dollars and only have a three hour layout to read what the amendment does?

Y. DAVIS: That's exactly right. And that's the fundamental problem with this process. Members, I would ask you to think about it. Maybe you don't want to vote no against it, but you probably ought to get an explanation about why you can vote for the Zebra Potato and you can't vote for humans in your district. Because that's a basic question. Because if the State of Texas cannot define that they care more about their lives than the humans in the districts that we all come from to represent the people of this state, but we can justify doing a potato, then we need to kind of find something else to be doing here, because we're not serving the people well at all. Thank you.

REMARKS ORDERED PRINTED

Representative Martinez Fischer moved to print remarks by Representative Y. Davis.

The motion prevailed.

CHISUM: I guess I had better address the Zebra Potato. Senator Juan Hinojosa, who represents the Valley, put that in the budget. The Zebra Potato is something that could destroy the potato market in the State of Texas. Do you think that's not

important? You need to eat. You need to eat. It's a disease that can be fixed. That money went to A&M, Ag Extension Service, and they're going to do some research on it. I hope they find it. But let me tell you, food and fiber is a valuable industry in this state, and we need to fix some of those things.

MENENDEZ: Chairman Chisum, I'm sorry that earlier today when you were laying it out I had to go take care of something with my family, so I just want to ask you a couple of questions for legislative intent. Chairman Chisum, in Article IX, on page 36, in Section 6.23, it starts with restrictions on expenditures for lobbying activities. And it says here that "none of the funds appropriated under this act may be used to compensate a lobbyist registered under Chapter 305, Government Code, for engaging in lobbying activities." In the next section, it says in Section 6.24, "political aid and legislative influence prohibited. The funds appropriated by this act regardless of source or character may not be expended except in compliance of Chapter 556 of the Government Code." Chairman Chisum, after having read those two restrictions on the state's tax dollars, which I support wholeheartedly—I guess my question is, Chairman Chisum, on page 9, page 38, Article IX, where we had a rider under 6.27 that, in essence, asks for the same restrictions on grants to certain peace officer organizations. Unfortunately, that rider had a contingency that you and I discussed that unfortunately it seems that you were telling me that the senate put on. But Chairman, when I read Section 6.23, the restriction on expenditures for lobbying activities, and 6.24, political and legislative influence prohibited, it seems to me that the budget already states there shouldn't be any taxpayer dollars used for any kind of lobbying or political aid or legislative influence. Would you agree with that statement?

CHISUM: I believe that is a correct statement.

REMARKS ORDERED PRINTED

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

The motion prevailed.

HILDERBRAN: Chairman Chisum, I just wanted to go over for everybody information and kind of follow through on the parks funding that was talked about earlier. I think we need to make a connection about what the Appropriations Committee did and how some of that money is contingent upon the passage of **HB 12**. So, would you address what we did in parks? Didn't we raise parks funding in the appropriations bill record amounts?

CHISUM: Record amounts, I believe about \$108 million additional for parks we've appropriated if **HB 12** passes. It is critical to this budget.

HILDERBRAN: In fact, if **HB 12** does not pass, we lose \$56 million of the GR dedicated part, which is 74.9 in your appropriation. So \$56 million of that is contingent on what's in **HB 1** versus **HB 12**?

CHISUM: Yes, as well as the beach erosion money that's going to be \$25 million there. The passage of **HB 12** is critical to the parks funding for this state.

HILDERBRAN: Yes, there's a pass through that goes to parks that's a pass through for the beach erosion programs included in the appropriation for parks. Thank you for your work.

DUNNAM: I just have a question about one area. I've been listening all day and nobody talked about it. I saw a sheet of paper yesterday, and it may not be accurate, but the teachers are getting a raise of how much?

CHISUM: I believe the statement was about \$400.

DUNNAM: \$400.

CHISUM: \$430.

DUNNAM: And I saw a sheet yesterday, and I can't find it in the budget, I don't know whether it was in a different format. It had a list of the changes made for various state officials. Do you know what I'm talking about?

CHISUM: Yes, I do.

DUNNAM: The attorney general of Texas is going to get a \$25,000 raise, which is about a 20 percent raise. Is that correct?

CHISUM: I don't have that in front of me, but some of the executive officers—

DUNNAM: The attorney general goes from either, I think goes from \$125,000 a year to \$150,000 a year. Does that sound about right?

CHISUM: And Mr. Dunnam, as you well know an out-of-school lawyer can make that much money.

DUNNAM: I'm not—I just want to make sure because we're going to hear about this when we go back home. The comptroller is getting a 20 percent raise from \$125,000 to \$150,000. Is that about right?

CHISUM: I believe that's correct.

DUNNAM: The governor of the State of Texas is going from about \$118,000 a year to \$150,000 a year. Is that right?

CHISUM: Yes, sir.

DUNNAM: So Governor Perry is getting almost a \$35,000 raise, which is about a 30 percent raise.

CHISUM: I believe it's dependent upon—it just allows him to do that. He can choose not to do that.

DUNNAM: He can choose not to take the money?

CHISUM: That's correct.

DUNNAM: Okay, and I think if we look in there, there are some other officials. For example, the person who runs TRS, their pay is going from, let's say, from \$250,000-ish or \$260,000-ish to \$401,000 a year.

CHISUM: Yes. Mr. Dunnam, that's a \$1.8 billion fund he's managing.

DUNNAM: I know, but I just, when I go home—

CHISUM: Yes, sir. I'm proud that we can pay that because in that kind of money, if you don't make that money we are all in trouble.

DUNNAM: I just want—I don't know if people know this, I did see this sheet of paper, and when I go home and somebody says we got the teachers a \$400 raise and then they point out that we gave the comptroller, the governor, and the attorney general 20 percent raises of \$25,000 a year, we gave somebody that runs TRS, who evidently have been doing a pretty good job, haven't they, for the past decade?

CHISUM: Yes, sir, that's they've been making 12 percent.

DUNNAM: We've been giving a qualified person at under \$300,000 a year, but all of a sudden we're getting ready to pay this state employee \$401,000 a year. Just want to make sure. That hasn't been discussed today.

CHISUM: Mr. Dunnam, I have never met that person.

DUNNAM: I'm not suggesting that. I'm just saying the budget is a set of priorities, and I do think that when y'all cut the possible teacher pay raise that this house voted for and then turned around and gave the governor a 30 percent raise, that is misplaced priorities.

CHISUM: Yes, sir. Thank you.

COLEMAN: Thank you, Mr. Speaker. Mr. Chisum, and again, I know you've worked hard on this under some very trying circumstances, probably more trying than usual because it's just, you know, it's a trying time. But would we agree that we're at some of the best times we've ever had in this state financially?

CHISUM: Yes, sir.

COLEMAN: And wouldn't you agree that in contrast to the time when there was a \$10 billion hole in the budget, there was that cause or at least there seemed to some of the reasons to cut back programs, that there was enough money today in order to bring those programs back to at least those levels?

CHISUM: And we did that. Yes, sir.

COLEMAN: But did you bring, for example, CHIP back to the level that it was prior to that 2003 budget?

CHISUM: You just heard Mr. Turner.

COLEMAN: I heard Mr. Turner, but I'm asking you.

CHISUM: Yes, sir, and we did bring CHIP back to those levels. The fact of the matter is if you qualify for CHIP—

COLEMAN: No, sir, I'm asking if this budget puts back 127,000 kids eligible for CHIP.

CHISUM: This budget fully funds the expected people who are going to sign up for CHIP. It's fully funded.

COLEMAN: So—and Mr. Turner did a great job—of 100,000 to 125,000 on top of the 300,000 would be 400-and-something thousand, which would be 100,000 less than the numbers that were on CHIP when we started the session in 2003. So, I appreciate your answer, but you know we need to not lie, and so in terms of the number of kids, I just want to make sure that we understand that in a time that there was a shortfall that was the reason for making all those cuts. And now we're in a time where there is a 14, I guess, \$14 billion plus surplus, but we still could not move forward to restore those cuts. That's why we're in that hole. I just wanted to ask you, is that—

Representative Chisum moved to adopt the conference committee report on **HB 1**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1** prevailed by (Record 1973): 114 Yeas, 35 Nays, 1 Present, not voting.

Yeas — 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; Dutton; Eissler; England; Farabee; Flores; Flynn; Frost; Garcia; Gattis; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Heflin; Hilderbran; Hill; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Lucio; Macias; Madden; Mallory Caraway; Martinez; McCall; McClendon; McReynolds; Menendez; Miller; Morrison; Mowery; Murphy; Naishtat; O'Day; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Riddle; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Taylor; Truitt; Turner; Van Arsdale; Vaught; West; Woolley; Zedler; Zerwas.

Nays — Allen; Alonzo; Burnam; Castro; Coleman; Davis, Y.; Dunnam; Eiland; Elkins; Escobar; Farias; Farrar; Gallego; Geren; Hernandez; Herrero; Hochberg; Hodge; Leibowitz; Martinez Fischer; Merritt; Miles; Moreno; Noriega; Oliveira; Olivo; Pierson; Pitts; Ritter; Rodriguez; Talton; Thompson; Veasey; Villarreal; Vo.

Present, not voting — Mr. Speaker(C).

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

STATEMENTS OF VOTE

I was shown voting no on Record No. 1973. I intended to vote yes.

Geren

I was shown voting yes on Record No. 1973. I intended to vote no.

Harless

I was shown voting yes on Record No. 1973. I intended to vote no.

Kuempel

I was shown voting no on Record No. 1973. I intended to vote yes.

Pierson

REASON FOR VOTE

In March, I entered a statement in the House Journal explaining my nay vote against **HB 1**. I voted against the bill because although the legislature had an unprecedented opportunity to invest in our state, that budget left \$4.2 billion in available money unappropriated. That budget also failed to restore the cuts in healthcare and public education made in 2003. The conference committee report does not correct these shortcomings.

The conference committee report in some ways is even worse than the budget passed by the house in March. The 13th retirement check for retired teachers is now not guaranteed, but contingent on an actuarial report and the cost of the 13th check may be borne by active teachers. The budget increases funding for the fundamentally flawed policy of giving incentive pay to teachers based on standardized test results. In public education, the \$850 across-the-board pay increase to teachers passed by the house has been cut to \$425.

The pay raise for teachers equates to just above a dollar a day before taxes, but our statewide leaders fared much better under the conference committee report. The attorney general and comptroller will both see \$25,000 raises from \$125,000 to \$150,000. The governor will receive a \$35,000 raise from \$115,000 to \$150,000. These raises are just another example of misplaced priorities.

Other problems created since 2003 remain unaddressed in the conference committee report. Tuition at public universities continues to increase at an alarming rate because of tuition deregulation, making a college education more unaffordable for middle-class families. With Texas state parks in a crisis situation, the budget calls for a study of the problem rather than lifting the cap on the use of the sporting goods sales tax and dedicating all of the money to that for which it was originally intended. Although funding for Children's Health Insurance Program is increased, the program will still cover 100,000 fewer children than it did in 2003.

Some of the new spending in the conference committee report reflects the misplaced priorities of the legislature this session. The Office of the Governor's budget in the conference committee report has increased by \$185 million over the house budget passed in March. Most of this money is earmarked as subsidies for private companies. About \$150 million in special items for higher education also appeared in this conference report that appears to be tied more to politics than public policy.

From the 2005 session to this session, the budget has grown from \$138 billion to over \$152 billion, a 10 percent increase. In spite of this sizeable increase in the budget, our basic priorities have not yet been adequately addressed, or even restored to pre-2003 levels. Because of the combination of unmet needs and unjustified spending, I voted against the conference committee report to **HB 1**.

Leibowitz

REMARKS ORDERED PRINTED

Representative Gattis moved to print remarks by Representative Turner.

The motion prevailed.

Representative Coleman moved to print all remarks on **HB 1**.

The motion prevailed.

(Speaker pro tempore in the chair)

PARLIAMENTARY INQUIRY

REPRESENTATIVE HERRERO: For the purposes of clarification in answering Representative Alonzo's questions, my understanding is that when you call the question, at that point, what is in question is whether or not we're going to vote on the bill, is that correct?

SPEAKER PRO TEMPORE: If the house moves to call up the question, then the bill will come up without further debate.

HERRERO: Right, and if during that time period, there were individuals speaking, they could either come up to speak for, on, or against the bill during that time period.

SPEAKER PRO TEMPORE: If the motion to call the question is granted, then there will be a speech pro and con, three minutes each. And then at that point in time there will be a vote on the actual bill. No, I'm sorry. Okay, Representative Herrero, let's try this. If there is a motion to call the question, then there will be a debate on the motion to call the question, pro and con, three minutes each. And then it is that point in time then the bill is before us.

HERRERO: Right. In the speaker's absolute discretion to recognize people or representatives, then under that analogy or that thought process, the call for the question does not have to be recognized. Is that correct?

SPEAKER PRO TEMPORE: That is correct.

HERRERO: It's of the discretion of the speaker. Is that correct?

SPEAKER PRO TEMPORE: That is correct.

HERRERO: And with respect to personal privilege, that takes precedence even for a call of the question. Is that correct?

SPEAKER PRO TEMPORE: In the mode of order it takes precedence over everything but a motion to adjourn.

HERRERO: Correct, and if someone felt strongly enough, if they were not permitted to speak on a bill, then they could exercise that personal privilege to do so, is that correct?

SPEAKER PRO TEMPORE: Let me tell you, I know that there have been several requests for personal privilege speeches. It is the intent of the chair to move us along on this calendar and then at some point tonight, then we will have personal privilege speeches, but it is the intent of the chair, to hold off personal privilege speeches right now, for us to move along on the calendar.

HERRERO: And at some point if there were—at any point we could move to suspend the rules. Is that correct?

SPEAKER PRO TEMPORE: At any point to the extent that the motion is in order.

HERRERO: That's correct, and that would even apply as to the call of the question. Is that correct?

SPEAKER PRO TEMPORE: That is correct.

REMARKS ORDERED PRINTED

Representative Herrero moved to print remarks between the speaker pro tempore and Representative Herrero.

The motion prevailed.

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 4).

SB 1266 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Pickett submitted the conference committee report on **SB 1266**.

Representative Pickett moved to adopt the conference committee report on **SB 1266**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 1266** prevailed by (Record 1974): 142 Yeas, 1 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; Berman; Bohac; 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; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; 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.; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; 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; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

Nays — Kolkhorst.

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

Absent — Bolton; Elkins; McReynolds; Menendez; Talton.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 1974. I intended to vote no.

Hilderbran

When Record No. 1974 was taken, I was in the house but away from my desk. I would have voted yes.

Menendez

SB 1879 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hamilton submitted the conference committee report on **SB 1879**.

Representative Hamilton moved to adopt the conference committee report on **SB 1879**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 1879** prevailed by (Record 1975): 143 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; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; 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; Kruse; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; 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; 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 — Miller.

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

Absent — Bailey; England; Merritt; Rodriguez.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 1975. I intended to vote no.

Anderson

I was shown voting yes on Record No. 1975. I intended to vote no.

Aycock

I was shown voting yes on Record No. 1975. I intended to vote no.

B. Brown

I was shown voting yes on Record No. 1975. I intended to vote no.

F. Brown

I was shown voting yes on Record No. 1975. I intended to vote no.

Callegari

I was shown voting yes on Record No. 1975. I intended to vote no.

Christian

I was shown voting yes on Record No. 1975. I intended to vote no.

R. Cook

I was shown voting yes on Record No. 1975. I intended to vote no.

Crabb

I was shown voting yes on Record No. 1975. I intended to vote no.

Deshotel

When Record No. 1975 was taken, I was in the house but away from my desk. I would have voted yes.

England

I was shown voting yes on Record No. 1975. I intended to vote no.

Farabee

I was shown voting yes on Record No. 1975. I intended to vote no.

Geren

I was shown voting yes on Record No. 1975. I intended to vote no.

Gonzalez Toureilles

I was shown voting yes on Record No. 1975. I intended to vote no.

Harless

I was shown voting yes on Record No. 1975. I intended to vote no.

Heflin

I was shown voting yes on Record No. 1975. I intended to vote no.

Hilderbran

I was shown voting yes on Record No. 1975. I intended to vote no.

Homer

I was shown voting yes on Record No. 1975. I intended to vote no.

C. Howard

I was shown voting yes on Record No. 1975. I intended to vote no.

Keffer

I was shown voting yes on Record No. 1975. I intended to vote no.

P. King

I was shown voting yes on Record No. 1975. I intended to vote no.

S. King

I was shown voting yes on Record No. 1975. I intended to vote no.

Kuempel

I was shown voting yes on Record No. 1975. I intended to vote no.

Macias

I was shown voting yes on Record No. 1975. I intended to vote no.

Madden

I was shown voting yes on Record No. 1975. I intended to vote no.

Martinez Fischer

I was shown voting yes on Record No. 1975. I intended to vote no.

McCall

When Record No. 1975 was taken, I was in the house but away from my desk. I would have voted no.

Merritt

I was shown voting yes on Record No. 1975. I intended to vote no.

Naishtat

I was shown voting yes on Record No. 1975. I intended to vote no.

Parker

I was shown voting yes on Record No. 1975. I intended to vote no.

Paxton

I was shown voting yes on Record No. 1975. I intended to vote no.

Peña

I was shown voting yes on Record No. 1975. I intended to vote no.

Phillips

I was shown voting yes on Record No. 1975. I intended to vote no.

Raymond

I was shown voting yes on Record No. 1975. I intended to vote no.

Riddle

When Record No. 1975 was taken, I was in the house but away from my desk. I would have voted no.

Rodriguez

I was shown voting yes on Record No. 1975. I intended to vote no.

Smithee

I was shown voting yes on Record No. 1975. I intended to vote no.

Solomons

I was shown voting yes on Record No. 1975. I intended to vote no.

Taylor

I was shown voting yes on Record No. 1975. I intended to vote no.

Truitt

I was shown voting yes on Record No. 1975. I intended to vote no.

Woolley

I was shown voting yes on Record No. 1975. I intended to vote no.

Zedler

I was shown voting yes on Record No. 1975. I intended to vote no.

Zerwas

SB 101 - MOTION TO ADOPT CONFERENCE COMMITTEE REPORT

Representative Morrison submitted the conference committee report on **SB 101**.

Representative Morrison moved to adopt the conference committee report on **SB 101**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 101** was lost by (Record 1976): 64 Yeas, 75 Nays, 3 Present, not voting.

Yeas — Anderson; Aycock; Berman; Bohac; Bolton; Bonnen; Brown, B.; Brown, F.; Callegari; Christian; Cohen; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Delisi; Driver; Dunnam; Eissler; Elkins; Flynn; Gattis; Goolsby; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Hill; Howard, C.; Howard, D.; Jackson; King, P.; King, S.; Krusee; Kuempel; Latham; Laubenberg; Macias; Madden; McCall; Morrison; Murphy; O'Day; Parker; Patrick; Paxton; Raymond; Riddle; Rose; Smith, T.; Smith, W.; Solomons; Strama; Straus; Taylor; Truitt; Van Arsdale; Vaught; Woolley; Zedler; Zerwas.

Nays — Allen; Alonzo; Anchia; Bailey; Burnam; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; England; Escobar; Farabee; Farias; Farrar; Flores; Frost; Gallego; Garcia; Giddings; Gonzales; Gonzalez Toureilles; Guillen; Haggerty; Hamilton; Heflin;

Hernandez; Herrero; Hochberg; Hodge; Homer; Hopson; Hughes; Jones; Keffer; King, T.; Leibowitz; Lucio; Mallory Caraway; Martinez; Martinez Fischer; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Mowery; Naishtat; Noriega; Oliveira; Olivo; Orr; Ortiz; Otto; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Rodriguez; Smithee; Swinford; Veasey; Villarreal; Vo; West.

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

Absent — Branch; Geren; Hilderbran; Isett; Kolkhorst; Pierson; Talton; Thompson.

PAIRED VOTES

Ritter (present), who would vote yes, with Thompson (absent), who would vote no.

STATEMENTS OF VOTE

When Record No. 1976 was taken, my vote failed to register. I would have voted yes.

Branch

I was shown voting no on Record No. 1976. I intended to vote yes.

Farabee

I was shown voting yes on Record No. 1976. I intended to vote no.

Gattis

When Record No. 1976 was taken, my vote failed to register. I would have voted yes.

Geren

When Record No. 1976 was taken, my vote failed to register. I would have voted yes.

Hilderbran

When Record No. 1976 was taken, I was in the house but away from my desk. I would have voted yes.

Isett

When Record No. 1976 was taken, my vote failed to register. I would have voted no.

Kolkhorst

I was shown voting yes on Record No. 1976. I intended to vote no.

Raymond

I was shown voting yes on Record No. 1976. I intended to vote no.

T. Smith

SB 1846 - RULES SUSPENDED

Representative Eiland moved to suspend all necessary rules to consider the conference committee report on **SB 1846**.

A record vote was requested.

The motion prevailed by (Record 1977): 138 Yeas, 2 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Darby; Davis, J.; 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; Hancock; Hardcastle; Harless; 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; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Moreno; 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; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

Nays — Callegari; Miller.

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

Absent — Crownover; Davis, Y.; Hamilton; Hughes; Morrison; Olivo; Taylor; Thompson.

STATEMENT OF VOTE

I was shown voting no on Record No. 1977. I intended to vote yes.

Callegari

SB 1846 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Truitt submitted the conference committee report on **SB 1846**.

Representative Truitt moved to adopt the conference committee report on **SB 1846**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 1846** prevailed by (Record 1978): 147 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; Harless; 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; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent — Thompson.

HR 2880 - ADOPTED
(by Murphy)

The following privileged resolution was laid before the house:

HR 2880

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 1119** (authority of a local authority to implement a photographic traffic signal enforcement system; providing for the imposition of civil penalties; providing a criminal penalty) 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 sections to proposed Chapter 707, Transportation Code:

Sec. 707.006. GENERAL SURVEILLANCE PROHIBITED; OFFENSE.

(a) A local authority shall operate a photographic traffic control signal enforcement system only for the purpose of detecting a violation or suspected violation of a traffic-control signal.

(b) A person commits an offense if the person uses a photographic traffic signal enforcement system to produce a recorded image other than in the manner and for the purpose specified by this chapter.

(c) An offense under this section is a Class A misdemeanor.

Sec. 707.007. AMOUNT OF CIVIL PENALTY; LATE PAYMENT PENALTY. If a local authority enacts an ordinance to enforce compliance with the instructions of a traffic-control signal by the imposition of a civil or administrative penalty, the amount of:

- (1) the civil or administrative penalty may not exceed \$75; and
- (2) a late payment penalty may not exceed \$25.

Sec. 707.008. DEPOSIT OF REVENUE FROM CERTAIN TRAFFIC PENALTIES. (a) Not later than the 60th day after the end of a local authority's fiscal year, after deducting amounts the local authority is authorized by Subsection (b) to retain, the local authority shall:

(1) send 50 percent of the revenue derived from civil or administrative penalties collected by the local authority under this section to the comptroller for deposit to the credit of the regional trauma account established under Section 782.002, Health and Safety Code; and

(2) deposit the remainder of the revenue in a special account in the local authority's treasury that may be used only to fund traffic safety programs, including pedestrian safety programs, public safety programs, intersection improvements, and traffic enforcement.

(b) A local authority may retain an amount necessary to cover the costs of:

(1) purchasing or leasing equipment that is part of or used in connection with the photographic traffic signal enforcement system in the local authority;

(2) installing the photographic traffic signal enforcement system at sites in the local authority, including the costs of installing cameras, flashes, computer equipment, loop sensors, detectors, utility lines, data lines, poles and mounts, networking equipment, and associated labor costs;

(3) operating the photographic traffic signal enforcement system in the local authority, including the costs of creating, distributing, and delivering violation notices, review of violations conducted by employees of the local authority, the processing of fine payments and collections, and the costs associated with administrative adjudications and appeals; and

(4) maintaining the general upkeep and functioning of the photographic traffic signal enforcement system.

(c) Chapter 133, Local Government Code, applies to fee revenue described by Subsection (a)(1).

(d) If under Section 133.059, Local Government Code, the comptroller conducts an audit of a local authority and determines that the local authority retained more than the amounts authorized by this section or failed to deposit amounts as required by this section, the comptroller may impose a penalty on the local authority equal to twice the amount the local authority:

- (1) retained in excess of the amount authorized by this section; or
- (2) failed to deposit as required by this section.

Explanation: This change is necessary to provide for the administration of a civil or administrative penalty imposed by a local authority to enforce compliance with the instructions of a traffic-control signal and use of the money collected to help fund regional emergency medical services.

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

SECTION 4. Section 133.004, Local Government Code, is amended to read as follows:

Sec. 133.004. CIVIL FEES. This chapter applies to the following civil fees:

(1) the consolidated fee on filing in district court imposed under Section 133.151;

(2) the filing fee in district court for basic civil legal services for indigents imposed under Section 133.152;

(3) the filing fee in courts other than district court for basic civil legal services for indigents imposed under Section 133.153;

(4) the filing fees for the judicial fund imposed in certain statutory county courts under Section 51.702, Government Code;

(5) the filing fees for the judicial fund imposed in certain county courts under Section 51.703, Government Code;

(6) the filing fees for the judicial fund imposed in certain statutory probate courts under Section 51.704, Government Code;

(7) fees collected under Section 118.015;

(8) marriage license fees for the family trust fund collected under Section 118.018;

(9) marriage license or declaration of informal marriage fees for the child abuse and neglect prevention trust fund account collected under Section 118.022; ~~and~~

(10) the filing fee for the judicial fund imposed in district court, statutory county court, and county court under Section 133.154; and

(11) the portion of the civil or administrative penalty described by Section 707.008(a)(1), Transportation Code, imposed by a local authority to enforce compliance with the instructions of a traffic-control signal.

SECTION 5. Subtitle B, Title 9, Health and Safety Code, is amended by adding Chapter 782 to read as follows:

CHAPTER 782. REGIONAL EMERGENCY MEDICAL SERVICES

Sec. 782.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Commissioner" means the executive commissioner of the Health and Human Services Commission.

Sec. 782.002. REGIONAL TRAUMA ACCOUNT. (a) The regional trauma account is created as a dedicated account in the general revenue fund of the state treasury. Money in the account may be appropriated only to the commission to make distributions as provided by Section 782.003.

(b) The account is composed of money deposited to the credit of the account under Section 707.008, Transportation Code, and the earnings of the account.

(c) Sections 403.095 and 404.071, Government Code, do not apply to the account.

Sec. 782.003. PAYMENTS FROM THE REGIONAL TRAUMA ACCOUNT. (a) The commissioner shall use money appropriated from the regional trauma account established under Section 782.002 to fund

uncompensated care of designated trauma facilities and county and regional emergency medical services located in the area served by the trauma service area regional advisory council that serves the local authority submitting money under Section 707.008, Transportation Code.

(b) In any fiscal year, the commissioner shall use:

(1) 96 percent of the money appropriated from the account to fund a portion of the uncompensated trauma care provided at facilities designated as state trauma facilities by the Department of State Health Services;

(2) two percent of the money appropriated from the account for county and regional emergency medical services;

(3) one percent of the money appropriated from the account for distribution to the 22 trauma service area regional advisory councils; and

(4) one percent of the money appropriated from the account to fund administrative costs of the commission.

(c) The money under Subsection (b) shall be distributed in proportion to the amount deposited to the account from the local authority.

Explanation: This change is necessary to provide that money from civil or administrative penalties imposed by a local authority to enforce compliance with the instructions of a traffic-control signal is to be used for regional emergency medical services.

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

SECTION 6. Section 707.008, Transportation Code, as added by this Act, and Section 782.002, Health and Safety Code, as added by this Act, apply to revenue received by a local authority unit of this state from the imposition of a civil or administrative penalty on or after the effective date of this Act, regardless of whether the penalty was imposed before, on, or after the effective date of this Act.

SECTION 7. Not later than December 1, 2007, the executive commissioner of the Health and Human Services Commission shall adopt rules to implement Chapter 782, Health and Safety Code, as added by this Act.

Explanation: This change is necessary to implement the changes in law that provide for the use of money from civil or administrative penalties imposed by a local authority to enforce compliance with the instructions of a traffic-control signal.

(4) House Rule 13, Section 9(a)(2), is suspended to permit the conference committee to omit text from the section containing the effective date as follows:

(a) Except as provided by Subsection (b) of this section, ã 1 .

(b) This Act takes effect only if **SB 125**, Acts of the 80th Legislature, Regular Session, 2007, is enacted and becomes law.

Explanation: The language making the bill contingent on **SB 125** taking effect is no longer necessary since that bill has been incorporated into the conference committee report for **SB 1119**.

HR 2880 was adopted.

SB 1119 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Murphy submitted the conference committee report on **SB 1119**.

Representative Murphy moved to adopt the conference committee report on **SB 1119**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 1119** prevailed by (Record 1979): 125 Yeas, 18 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; Berman; Bohac; Bolton; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Creighton; Crownover; Darby; Davis, J.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; England; Escobar; Farabee; Farias; Farrar; Frost; Gallego; Garcia; Gattis; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hancock; Hardcastle; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hochberg; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jones; Keffer; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Mallory Caraway; Martinez; Martinez Fischer; McClendon; McReynolds; Menendez; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; 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.

Nays — Bonnen; Corte; Crabb; Elkins; Flynn; Geren; Harless; Harper-Brown; Hill; Hodge; Jackson; Madden; McCall; Merritt; Miles; Patrick; Pierson; Riddle.

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

Absent — Davis, Y.; Flores; Hamilton; King, P.; Thompson.

STATEMENT OF VOTE

I was shown voting yes on Record No. 1979. I intended to vote no.

Isett

HB 2265 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Haggerty submitted the following conference committee report on **HB 2265**:

Austin, Texas, May 26, 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 2265** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Averitt	Haggerty
Carona	Chavez
Lucio	Pickett
Nelson	Quintanilla
Van de Putte	Talton
On the part of the senate	On the part of the house

HB 2265, A bill to be entitled An Act relating to the award of prizes in, and the conduct of, a progressive bingo game.

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

SECTION 1. Section 2001.002, Occupations Code, is amended by adding Subdivisions (8-a), (13-a), and (23-a) to read as follows:

(8-a) "Consolation prize" means a prize offered or awarded by a licensed authorized organization to a player in a progressive bingo game at a bingo occasion during which no player wins the jackpot prize for the progressive bingo game.

(13-a) "Jackpot prize" means a prize offered or awarded by a licensed authorized organization to the winner of a progressive bingo game.

(23-a) "Progressive bingo game" means a bingo game in which the prize amount may be increased over successive bingo occasions of the same licensed authorized organization until a player completes the winning pattern for the game specified by the organization.

SECTION 2. Section 2001.420, Occupations Code, is amended by adding Subsections (b-1), (d), (e), (f), and (g) to read as follows:

(b-1) Notwithstanding Subsection (b), a person may offer or award on a single bingo occasion prizes for progressive bingo games with an aggregate value of more than the maximum amount prescribed by Subsection (b). A jackpot prize or consolation prize offered or awarded in a progressive bingo game during a bingo occasion is not included in the aggregated value of prizes awarded at a single bingo occasion for purposes of Subsection (b).

(d) Notwithstanding Subsection (a), a jackpot prize for a single progressive bingo game may have a value of not more than \$2,500.

(e) A licensed authorized organization may offer only one progressive bingo game during each bingo occasion.

(f) A consolation prize in a progressive bingo game described by Subsection (b):

(1) may not exceed \$250; and

(2) may be offered only once during each bingo occasion.

(g) Subsections (b-1), (d), (e), and (f) and this subsection expire September 1, 2011.

SECTION 3. Effective September 1, 2011, Sections 2001.002(8-a), (13-a), and (23-a), Occupations Code, are repealed.

SECTION 4. Not later than January 1, 2011, the Texas Lottery Commission shall prepare and submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the legislature a report on:

(1) the implementation of progressive bingo by licensed authorized organizations as authorized by the changes in law made by this Act; and

(2) the effect of the implementation on net bingo proceeds available for charitable purposes.

SECTION 5. As soon as practicable after the effective date of this Act, the Texas Lottery Commission shall adopt the rules necessary to implement the changes in law made by this Act to Chapter 2001, Occupations Code.

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 Haggerty moved to adopt the conference committee report on **HB 2265**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 2265** prevailed by (Record 1980): 100 Yeas, 43 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Bailey; Bolton; Brown, F.; Burnam; Callegari; Castro; Chavez; Cohen; Coleman; Cook, B.; Cook, R.; Creighton; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Elkins; Escobar; Farabee; Farias; Farrar; Flores; Gallego; Garcia; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Hernandez; Herrero; Hochberg; Hodge; Homer; Howard, D.; Isett; Jones; Keffer; King, T.; Krusee; Kuempel; Leibowitz; Lucio; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; Menendez; Merritt; Miles; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; Oliveira; Olivo; Ortiz; Otto; Peña; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Thompson; Truitt; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

Nays — Anderson; Aycock; Berman; Bohac; Bonnen; Brown, B.; Christian; Corte; Crabb; Crownover; Darby; Davis, J.; Eissler; England; Flynn; Frost; Gattis; Geren; Harless; Harper-Brown; Hartnett; Heflin; Hilderbran; Hill; Hopson; Howard, C.; Hughes; Jackson; Latham; Laubenberg; Macias; McReynolds; Miller; O'Day; Orr; Parker; Patrick; Paxton; Phillips; Smith, T.; Talton; Taylor; Van Arsdale.

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

Absent — Branch; Chisum; King, P.; King, S.; Kolkhorst.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 1980. I intended to vote no.

F. Brown

I was shown voting yes on Record No. 1980. I intended to vote no.

B. Cook

I was shown voting yes on Record No. 1980. I intended to vote no.

Creighton

I was shown voting yes on Record No. 1980. I intended to vote no.

Delisi

I was shown voting yes on Record No. 1980. I intended to vote no.

Driver

I was shown voting yes on Record No. 1980. I intended to vote no.

Elkins

I was shown voting yes on Record No. 1980. I intended to vote no.

Keffer

When Record No. 1980 was taken, my vote failed to register. I would have voted no.

S. King

I was shown voting yes on Record No. 1980. I intended to vote no.

Riddle

I was shown voting yes on Record No. 1980. I intended to vote no.

Solomons

I was shown voting yes on Record No. 1980. I intended to vote no.

Truitt

I was shown voting yes on Record No. 1980. I intended to vote no.

Zedler

HB 3319 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Keffer submitted the following conference committee report on **HB 3319**:

Austin, Texas, May 26, 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 3319** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Duncan
 Ogden
 Whitmire
 Williams
 Zaffirini
 On the part of the senate

Keffer
 Y. Davis
 Bonnen
 Hill
 Ritter
 On the part of the house

HB 3319, A bill to be entitled An Act relating to the sales and use tax.

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

SECTION 1. Section 151.0048, Tax Code, is amended by adding

Subsection (b-1) to read as follows:

(b-1) "Real property service" does not include a service listed under Subsection (a) if the service is performed by a landman and is necessary to negotiate or secure land or mineral rights for acquisition or trade, including:

- (1) determining ownership;
- (2) negotiating a trade or agreement regarding land or mineral rights;
- (3) drafting and administering contractual agreements;
- (4) ensuring that all governmental regulations are complied with; and
- (5) any other action necessary to complete the transaction related to a

service described by this subsection, other than an information service described by Section 151.0038.

SECTION 2. Section 151.006, Tax Code, is amended to read as follows:

Sec. 151.006. "SALE FOR RESALE." (a) "Sale for resale" means a sale of:

(1) tangible personal property or a taxable service to a purchaser who acquires the property or service for the purpose of reselling it in the United States of America or a possession or territory of the United States of America or in the United Mexican States in the normal course of business in the form or condition in which it is acquired or as an attachment to or integral part of other tangible personal property or taxable service;

(2) tangible personal property to a purchaser for the sole purpose of the purchaser's leasing or renting it in the United States of America or a possession or territory of the United States of America or in the United Mexican States in the normal course of business to another person, but not if incidental to the leasing or renting of real estate;

(3) tangible personal property to a purchaser who acquires the property for the purpose of transferring it in the United States of America or a possession or territory of the United States of America or in the United Mexican States as an integral part of a taxable service; or

(4) a taxable service performed on tangible personal property that is held for sale by the purchaser of the taxable service.

(b) Subsection (a)(3) applies to a transfer of a wireless voice communication device as an integral part of a taxable service, regardless of whether there is a separate charge for the wireless voice communication device or whether the purchaser is the provider of the taxable service, if payment for the service is a condition for receiving the wireless voice communication device.

SECTION 3. Section 151.056, Tax Code, is amended by adding Subsection (g) to read as follows:

(g) In this subsection, "ready mix concrete contractor" means a person who manufactures or produces ready mixed concrete for construction purposes and incorporates the ready mixed concrete in the property improved. A ready mix concrete contractor performing a contract must separate and individually invoice the customer for each yard of ready mixed concrete produced and consumed for the improvement of real property and collect and remit the tax imposed under this chapter on the ready mixed concrete produced and consumed. The tax rate is applied to the price of the materials determined by the greater of the invoice price or fair market value of ready mixed concrete incorporated into the project. This subsection does not apply to an invoice submitted by a ready mix concrete contractor for a public works project.

SECTION 4. Sections 151.313(a) and (c), Tax Code, are amended to read as follows:

(a) The following items are exempted from the taxes imposed by this chapter:

(1) a drug or medicine, other than insulin, if prescribed or dispensed for a human or animal by a licensed practitioner of the healing arts;

(2) insulin;

(3) ~~subject to Subsection (c),~~ a drug or medicine that is required to be labeled with a "Drug Facts" panel in accordance with regulations of the federal Food and Drug Administration, without regard to whether it is prescribed or dispensed by a licensed practitioner of the healing arts;

(4) a hypodermic syringe or needle;

(5) a brace; hearing aid or audio loop; orthopedic, dental, or prosthetic device; ileostomy, colostomy, or ileal bladder appliance; or supplies or replacement parts for the listed items;

(6) a therapeutic appliance, device, and any related supplies specifically designed for those products, if dispensed or prescribed by a licensed practitioner of the healing arts, when those items are purchased and used by an individual for whom the items listed in this subdivision were dispensed or prescribed;

(7) corrective lens and necessary and related supplies, if dispensed or prescribed by an ophthalmologist or optometrist;

(8) specialized printing or signalling equipment used by the deaf for the purpose of enabling the deaf to communicate through the use of an ordinary telephone and all materials, paper, and printing ribbons used in that equipment;

(9) a braille wristwatch, braille writer, braille paper and braille electronic equipment that connects to computer equipment, and the necessary adaptive devices and adaptive computer software;

(10) each of the following items if purchased for use by the blind to enable them to function more independently: a slate and stylus, print enlarger, light probe, magnifier, white cane, talking clock, large print terminal, talking terminal, or harness for guide dog;

(11) hospital beds;

(12) blood glucose monitoring test strips;

(13) an adjustable eating utensil used to facilitate independent eating if purchased for use by a person, including a person who is elderly or physically disabled, has had a stroke, or is a burn victim, who does not have full use or control of the person's hands or arms;

(14) subject to Subsection (d), a dietary supplement; and

(15) intravenous systems, supplies, and replacement parts used in the treatment of humans.

(c) A product is a drug or medicine for purposes of this section if[±

~~(1)~~ the product:

(1) ~~(A)~~ is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease, illness, injury, or pain;

(2) ~~(B)~~ is applied to the human body or is a product that a human ingests or inhales;

(3) ~~(C)~~ is not an appliance or device; and

(4) ~~(D)~~ is not food[± or

~~(2) the product is labeled or required to be labeled with a "Drug Facts" panel in accordance with regulations of the federal Food and Drug Administration].~~

SECTION 5. Section 151.3162(b), Tax Code, is amended to read as follows:

(b) The following items are exempted from the tax imposed by this chapter:

(1) seedlings of trees ~~[commonly]~~ grown for commercial timber;

(2) defoliants, desiccants, equipment, fertilizers, fungicides, herbicides, insecticides, and machinery exclusively used in the production of timber to be sold in the regular course of business;

(3) machinery and equipment used in, and pollution control equipment required as a result of, the processing, packing, or marketing of timber products by an original producer if:

(A) the processing, packing, or marketing occurs at or from a location operated by the original producer;

(B) at least 50 percent of the value of the timber products processed, packed, or marketed at or from the location is attributable to products produced by the original producer and not purchased or acquired from others; and

(C) the original producer does not process, pack, or market for consideration timber products that belong to another person with a value greater than five percent of the total value of the timber products processed, packed, or marketed by the producer; and

(4) tangible personal property sold or used to be installed as a component of an underground irrigation system exclusively used in the production of timber to be sold in the regular course of business.

SECTION 6. (a) Section 151.318(b), Tax Code, is amended to read as follows:

(b) The exemption includes:

(1) chemicals, catalysts, and other materials that are used during a manufacturing, processing, or fabrication operation to produce or induce a chemical or physical change, to remove impurities, or to make the product more marketable;

(2) semiconductor fabrication cleanrooms and equipment; and

(3) pharmaceutical biotechnology cleanrooms and equipment that are installed as part of the construction of a new facility [~~with a value of at least \$150 million and~~] on which construction began after July 1, 2003[~~and before August 31, 2004~~].

(b) Notwithstanding any other provision of this Act, this section takes effect July 1, 2007, if this Act receives a vote of two-thirds of all members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this section takes effect September 1, 2007.

SECTION 7. Section 151.326, Tax Code, is amended to read as follows:

Sec. 151.326. CLOTHING AND FOOTWEAR FOR LIMITED PERIOD. (a) The sale of an article of clothing or footwear designed to be worn on or about the human body is exempted from the taxes imposed by this chapter if:

(1) the sales price of the article is less than \$100; and

(2) the sale takes place during a period beginning at 12:01 a.m. on the third ~~first~~ Friday in August and ending at 12 midnight on the following Sunday.

(b) This section does not apply to:

(1) any special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed;

(2) accessories, including jewelry, handbags, luggage, umbrellas, wallets, watches, and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing; and

(3) the rental of clothing or footwear.

SECTION 8. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.327 to read as follows:

Sec. 151.327. SCHOOL BACKPACKS BEFORE START OF SCHOOL.

(a) The sale or storage, use, or other consumption of a school backpack is exempted from the taxes imposed by this chapter if the backpack is purchased:

(1) for use by a student in a public or private elementary or secondary school;

(2) during the period described by Section 151.326(a)(2); and

(3) for a sales price of less than \$100.

(b) A retailer is not required to obtain an exemption certificate stating that school backpacks are purchased for use by students in a public or private elementary or secondary school unless the backpacks are purchased in a quantity that indicates that the backpacks are not purchased for use by students in a public or private elementary or secondary school.

SECTION 9. Sections 151.328(a) and (c), Tax Code, are amended to read as follows:

- (a) Aircraft are exempted from the taxes imposed by this chapter if:
- (1) sold to a person using the aircraft as a certificated or licensed carrier of persons or property;
 - (2) sold to a person who:
 - (A) has a sales tax permit issued under this chapter; and
 - (B) uses the aircraft for the purpose of providing flight instruction that is:
 - (i) recognized by the Federal Aviation Administration;
 - (ii) under the direct or general supervision of a flight instructor certified by the Federal Aviation Administration; and
 - (iii) designed to lead to a pilot certificate or rating issued by the Federal Aviation Administration or otherwise required by a rule or regulation of the Federal Aviation Administration;
 - (3) sold to a foreign government; or
 - (4) sold in this state to a person for use and registration in another state or nation before any use in this state other than flight training in the aircraft and the transportation of the aircraft out of this state.

(c) In this section, "aircraft" does not include a rocket or missile, but does include:

- (1) a fixed wing, heavier-than-air craft that is driven by propeller or jet and supported by the dynamic reaction of the air against its wings;
- (2) a helicopter; and
- (3) an airplane flight simulation training device [~~simulator~~] approved by the Federal Aviation Administration [~~for use as a Phase II or higher flight simulator~~] under Appendices A and B [~~Appendix II~~], 14 C.F.R. Part 60 [~~421~~].

SECTION 10. Subchapter E, Chapter 152, Tax Code, is amended by adding Section 152.090 to read as follows:

Sec. 152.090. CERTAIN HYDROGEN-POWERED MOTOR VEHICLES.

(a) In this section, "hydrogen-powered motor vehicle" means a vehicle that meets the Phase II standards established by the California Air Resources Board as of September 1, 2007, for an ultra low-emission vehicle II or stricter Phase II emission standards established by that board and:

- (1) is hydrogen power capable and has a fuel economy rating of at least 45 miles per gallon; or
- (2) is fully hydrogen-powered.

(b) The taxes imposed by this chapter do not apply to the sale or use of a hydrogen-powered motor vehicle.

SECTION 11. Section 321.203, Tax Code, is amended by amending Subsections (b), (c), (d), and (e) and adding Subsection (n) to read as follows:

(b) If a retailer has only one place of business in this state, all of the retailer's retail sales of taxable items [~~tangible personal property~~] are consummated at that place of business except as provided by Subsection (e).

(c) If a retailer has more than one place of business in this state, a sale of a taxable item [~~tangible personal property~~] by the retailer is consummated at the retailer's place of business:

(1) from which the retailer ships or delivers the item [property], if the retailer ships or delivers the item [property] to a point designated by the purchaser or lessee; or

(2) where the purchaser or lessee takes possession of and removes the item [property], if the purchaser or lessee takes possession of and removes the item [property] from a place of business of the retailer.

(d) If neither the possession of a taxable item [tangible personal property] is taken at nor shipment or delivery of the item [property] is made from the retailer's place of business in this state, the sale is consummated at:

(1) the retailer's place of business in this state where the order is received; or

(2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's agent or employee [salesman] who took the order operates.

(e) A sale of a taxable item [tangible personal property] is consummated at the location in this state to which the item [property] is shipped or delivered or at which possession is taken by the customer if transfer of possession of the item [property] occurs at, or shipment or delivery of the item [property] originates from, a location in this state other than a place of business of the retailer and if:

(1) the retailer is an itinerant vendor who has no place of business in this state;

(2) the retailer's place of business where the purchase order is initially received or from which the retailer's agent or employee [salesman] who took the order operates is outside this state; or

(3) the purchaser places the order directly with the retailer's supplier and the item [property] is shipped or delivered directly to the purchaser by the supplier.

(n) A sale of a service described by Section 151.0047 to remodel, repair, or restore nonresidential real property is consummated at the location of the job site.

SECTION 12. Section 323.102(c), Tax Code, is amended to read as follows:

(c) A tax imposed under Section 323.105 of this code or Chapter 326 or 383, Local Government Code, takes effect on the first day of the first calendar quarter after the expiration of the first complete calendar quarter occurring after the date on which the comptroller receives a notice of the action as required by Section 323.405(b).

SECTION 13. Section 323.203, Tax Code, is amended by amending Subsections (b), (c), (d), and (e) and adding Subsection (m) to read as follows:

(b) If a retailer has only one place of business in this state, all of the retailer's retail sales of taxable items [tangible personal property] are consummated at that place of business except as provided by Subsection (e).

(c) If a retailer has more than one place of business in this state, a sale of a taxable item [tangible personal property] by the retailer is consummated at the retailer's place of business:

(1) from which the retailer ships or delivers the item [property], if the retailer ships or delivers the item [property] to a point designated by the purchaser or lessee; or

(2) where the purchaser or lessee takes possession of and removes the item [property], if the purchaser or lessee takes possession of and removes the item [property] from a place of business of the retailer.

(d) If neither the possession of a taxable item [tangible personal property] is taken at nor shipment or delivery of the item [property] is made from the retailer's place of business in this state, the sale is consummated at:

(1) the retailer's place of business in this state where the order is received; or

(2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's agent or employee [salesman] who took the order operates.

(e) A sale of a taxable item [tangible personal property] is consummated at the location in this state to which the item [property] is shipped or delivered or at which possession is taken by the customer if transfer of possession of the item [property] occurs at, or shipment or delivery of the item [property] originates from, a location in this state other than a place of business of the retailer and if:

(1) the retailer is an itinerant vendor who has no place of business in this state;

(2) the retailer's place of business where the purchase order is initially received or from which the retailer's agent or employee [salesman] who took the order operates is outside this state; or

(3) the purchaser places the order directly with the retailer's supplier and the item [property] is shipped or delivered directly to the purchaser by the supplier.

(m) A sale of a service described by Section 151.0047 to remodel, repair, or restore nonresidential real property is consummated at the location of the job site.

SECTION 14. Section 403.014(a), Government Code, is amended to read as follows:

(a) Before each regular session of the legislature, the comptroller shall report to the legislature and the governor on the effect, if it is possible to assess, of exemptions, discounts, exclusions, special valuations, special accounting treatments, special rates, and special methods of reporting relating to:

(1) sales, excise, and use tax under Chapter 151, Tax Code;

(2) franchise tax under Chapter 171, Tax Code;

(3) school district property taxes under Title 1, Tax Code;

(4) motor vehicle tax under Section 152.090; and

(5) ~~(4)~~ any other tax generating more than five percent of state tax revenue in the prior fiscal year.

SECTION 15. The following sections of the Tax Code are repealed:

(1) Section 151.0232;

(2) Section 151.103(d);

(3) Section 151.202(c);

(4) Section 321.203(l); and

(5) Section 323.203(1).

SECTION 16. The change in law made by this Act does not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 17. (a) Except as provided by Subsection (b), this Act takes effect September 1, 2007.

(b) Sections 7 and 8 of this Act take effect immediately, if the Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution.

Representative Keffer moved to adopt the conference committee report on **HB 3319**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 3319** prevailed by (Record 1981): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Castro; Chavez; 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; Harless; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; 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; Patrick; Paxton; Peña; Phillips; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; 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 — Callegari; Chisum; King, S.; Riddle; Thompson.

STATEMENT OF VOTE

When Record No. 1981 was taken, I was in the house but away from my desk. I would have voted yes.

Callegari

HB 3826 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Morrison submitted the following conference committee report on **HB 3826**:

Austin, Texas, May 26, 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 3826** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Zaffirini
Averitt
Shapiro
Van de Putte

Morrison
F. Brown
McCall
D. Howard
Patrick

On the part of the senate

On the part of the house

HB 3826, A bill to be entitled An Act relating to high school curriculum requirements for admission to public institutions of higher education and to the admission to public institutions of higher education of the children of certain public servants killed in the line of duty.

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

SECTION 1. Section 51.803, Education Code, is amended to read as follows:

Sec. 51.803. AUTOMATIC ADMISSION: ALL INSTITUTIONS. (a) Each general academic teaching institution shall admit an applicant for admission to the institution as an undergraduate student if the applicant graduated with a grade point average in the top 10 percent of the student's high school graduating class in one of the two school years preceding the academic year for which the applicant is applying for admission and:

(1) the applicant graduated from a public or private high school in this state accredited by a generally recognized accrediting organization or from a high school operated by the United States Department of Defense;

(2) the applicant:

(A) successfully completed:

(i) at a public high school, the curriculum requirements established under Section 28.025 for the recommended or advanced high school program; or

(ii) at a high school to which Section 28.025 does not apply, a curriculum that is equivalent in content and rigor to the recommended or advanced high school program; or

(B) satisfied ACT's College Readiness Benchmarks on the ACT assessment applicable to the applicant or earned on the SAT assessment a score of at least 1,500 out of 2,400 or the equivalent; and

~~(3) [- To qualify for admission under this section, an applicant must submit an application before the expiration of any application filing deadline established by the institution and,] if the applicant graduated from a high school operated by the United States Department of Defense, the applicant is ~~[must be]~~ a Texas resident under Section 54.052 or is ~~[be]~~ entitled to pay tuition fees at the rate provided for Texas residents under Section 54.058(d) for the term or semester to which admitted.~~

(b) An applicant who does not satisfy the curriculum requirements prescribed by Subsection (a)(2)(A)(i) or (ii) is considered to have satisfied those requirements if the student completed the portion of the recommended or advanced curriculum or of the curriculum equivalent in content and rigor, as applicable, that was available to the student but was unable to complete the remainder of the curriculum solely because courses necessary to complete the remainder were unavailable to the student at the appropriate times in the student's high school career as a result of course scheduling, lack of enrollment capacity, or another cause not within the student's control.

(c) To qualify for admission under this section, an applicant must:

(1) submit an application before the expiration of any application filing deadline established by the institution; and

(2) provide a high school transcript or diploma that satisfies the requirements of Subsection (d).

(d) For purposes of Subsection (c)(2), a student's official transcript or diploma must, not later than the end of the student's junior year, indicate:

(1) whether the student has satisfied or is on schedule to satisfy the requirements of Subsection (a)(2)(A)(i) or (ii), as applicable; or

(2) if Subsection (b) applies to the student, whether the student has completed the portion of the recommended or advanced curriculum or of the curriculum equivalent in content and rigor, as applicable, that was available to the student.

(e) Each institution of higher education shall admit an applicant for admission to the institution as an undergraduate student if the applicant:

(1) is the child of a public servant listed in Section 615.003, Government Code, who was killed or sustained a fatal injury in the line of duty; and

(2) meets the minimum requirements, if any, established for purposes of this subsection by the governing board of the institution for high school or prior college-level grade point average and performance on standardized tests.

(f) After admitting an applicant under this section, the institution shall review the applicant's record and any other factor the institution considers appropriate to determine whether the applicant may require additional preparation for college-level work or would benefit from inclusion in a retention program. The institution may require a student so identified to enroll during the summer immediately after the student is admitted under this section to participate in

appropriate enrichment courses and orientation programs. This section does not prohibit a student who is not determined to need additional preparation for college-level work from enrolling, if the student chooses, during the summer immediately after the student is admitted under this section.

SECTION 2. Section 51.804, Education Code, is amended to read as follows:

Sec. 51.804. **ADDITIONAL AUTOMATIC ADMISSIONS: SELECTED INSTITUTIONS.** For each academic year, the governing board of each general academic teaching institution shall determine whether to adopt an admissions policy under which an applicant to the institution as a first-time freshman student, other than an applicant eligible for admission under Section 51.803, shall be admitted to the institution if the applicant:

(1) graduated from a public or private high school in this state accredited by a generally recognized accrediting organization with a grade point average in the top 25 percent of the applicant's high school graduating class; and

(2) satisfies the requirements of:

(A) Section 51.803(a)(2)(A) or 51.803(b), as applicable to the student, or Section 51.803 (a)(2)(B); and

(B) Sections 51.803(c)(2) and 51.803(d).

SECTION 3. Sections 51.805(a) and (e), Education Code, are amended to read as follows:

(a) A graduating student who does not qualify for admission under Section 51.803 or 51.804 may apply to any general academic teaching institution if the student satisfies the requirements of:

(1) Section 51.803(a)(2)(A) or 51.803(b), as applicable to the student, or Section 51.803(a)(2)(B); and

(2) Sections 51.803(c)(2) and 51.803(d).

(e) This section does not apply to an institution that has an open enrollment policy, except that a student may apply to a general academic teaching institution that has an open enrollment policy only if the student satisfies the requirements described by Subsection (a).

SECTION 4. Section 51.807, Education Code, is amended to read as follows:

Sec. 51.807. **RULEMAKING.** (a) The Texas Higher Education Coordinating Board may adopt rules relating to the operation of admissions programs under this subchapter, including rules relating to the identification of eligible students ~~[and the reporting requirements of Section 51.806].~~

(b) The Texas Higher Education Coordinating Board, after consulting with the Texas Education Agency, by rule shall establish standards for determining for purposes of this subchapter:

(1) whether a private high school is accredited by a generally recognized accrediting organization; and

(2) whether a person completed a high school curriculum that is equivalent in content and rigor to the curriculum requirements established under Section 28.025 for the recommended or advanced high school program.

SECTION 5. Section 51.803(e), Education Code, as added by this Act, applies beginning with admissions to general academic teaching institutions for the 2008-2009 academic year. Admissions to a general academic teaching institution before that academic year are covered by the law in effect before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 6. The commissioner of education shall adopt procedures to ensure that, as soon as practicable after this Act takes effect, each school district in this state provides written notification of the substance of Subchapter U, Chapter 51, Education Code, as amended by this Act, to each district student who, for the 2007-2008 school year, registers for one or more courses required for high school graduation. The commissioner may adopt rules under this section in the manner provided by law for emergency rules. Each district shall comply with the procedures adopted by the commissioner under this section.

SECTION 7. The changes in law made by this Act apply beginning with admissions to a general academic teaching institution for the 2008-2009 academic year. Admissions to a general academic teaching institution for an academic period before that academic year are governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 8. 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 Morrison moved to adopt the conference committee report on **HB 3826**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 3826** prevailed by (Record 1982): 142 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; 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; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; 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; Pickett; Pierson;

Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; 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 — Darby; Hamilton; Isett; Phillips; Rodriguez; Rose.

HB 539 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative W. Smith submitted the following conference committee report on **HB 539**:

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

West	W. Smith
Patrick	Coleman
Lucio	Heflin
Nichols	C. Howard
Wentworth	West
On the part of the senate	On the part of the house

HB 539, A bill to be entitled An Act relating to the regulation of fireworks and fireworks displays.

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

SECTION 1. Section 2154.003, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) In addition to the items described by Subsection (b), pop rockets with a propellant casing length of less than five inches, an exterior diameter of less than three-fourths of an inch, and an overall total rocket length of less than 26 inches are not permissible fireworks.

SECTION 2. Sections 2154.054(b) and (c), Occupations Code, are amended to read as follows:

(b) The council is composed of five members as follows:

(1) four members who are representatives from the fireworks industry;
and

(2) one member who is a representative of a county fire marshal's office and who has at least five years of experience as a county fire marshal.

(c) On [The Texas Pyrotechnic Association may, on] request by the commissioner, the following may recommend individuals for appointment to the council:

(1) the Texas Pyrotechnic Association or the Texas Fireworks Association for appointments under Subsection (b)(1); and

(2) the Texas Fire Marshal's Association for an appointment under Subsection (b)(2).

SECTION 3. Section 2154.202(g), Occupations Code, is amended to read as follows:

(g) A retail fireworks permit holder may sell fireworks only to the public, and only during periods:

(1) beginning June 24 and ending at midnight on July 4; ~~and~~

(2) beginning December 20 and ending at midnight on January 1 of the following year; and

(3) beginning May 1 and ending at midnight on May 5 if the fireworks are sold at a location that is not more than 100 miles from the Texas-Mexico border and that is in a county in which the commissioners court of the county has approved the sale of fireworks during the period.

SECTION 4. Section 2154.252(c), Occupations Code, is amended to read as follows:

(c) Fireworks may not be sold or offered for sale to children under 16 ~~14~~ years of age or to an intoxicated or incompetent person. A person selling fireworks at retail shall make a reasonable effort to determine that potential purchasers of fireworks are of the minimum age required by this subsection.

SECTION 5. Subchapter F, Chapter 2154, Occupations Code, is amended by adding Section 2154.254 to read as follows:

Sec. 2154.254. EMPLOYMENT OF MINORS. (a) Except as provided by Subsection (c), a person may not employ or allow a person younger than 16 years of age to manufacture, distribute, sell, or purchase fireworks in the course of the person's business.

(b) Except as provided by Subsection (c), a person may not employ a person 16 years of age or older but younger than 18 years of age to sell fireworks at a retail sales location unless the person selling fireworks at that location is accompanied by another person who is at least 18 years of age.

(c) An owner of a retail sales location may employ a person who is otherwise prohibited from engaging in that activity by Subsection (a) or (b) to sell fireworks at the owner's retail sales location if the person employed is:

(1) a member of the owner's immediate family;

(2) 12 years of age or older; and

(3) accompanied by another person who is at least 18 years of age while the person is engaged in selling fireworks at that location.

SECTION 6. Section 2154.303(c), Occupations Code, is amended to read as follows:

(c) A violation of Section 2154.251(a)(1), (2), (3), (4), ~~or~~ (5), or (8) that results in property damage in an amount of less than \$200 and does not result in bodily injury or death, or a violation of Section 2154.254(a) or (b), is a Class C misdemeanor.

SECTION 7. Section 352.051, Local Government Code, is amended by amending Subsections (a), (b), (c), (d), and (f) and adding Subsection (j) to read as follows:

(a) For the purposes of this section the following definitions shall apply:

(1) "Restricted fireworks" means only those items classified under 49 C.F.R. Sec. 173.100(r)(2) (10-1-86 edition), as "skyrockets with sticks" and "missiles with fins".

(2) "Drought conditions" means ~~[shall mean]~~ the existence immediately preceding or during the fireworks season of a ~~[long term deficit of moisture creating atypically severe conditions with increased wildfire occurrence as defined by the Texas Forest Service through the use of the]~~ Keetch-Byram Drought Index of 575 or greater~~[-, or when such index is not available, through a comparable measurement which takes into consideration the burning index, spread component, or ignition component for that particular area].~~

(b)(1) The Texas Forest Service in the ordinary course of its activities shall determine whether drought conditions, as defined under Subsection (a)(2), exist on average in ~~[all or part of]~~ any county requesting such a determination. The Texas Forest Service shall make available the measurement index guidelines used to ~~[that]~~ determine whether drought conditions exist in a particular area ~~[is in drought condition]~~. Following any determination that such drought conditions exist, the Texas Forest Service shall notify said county or counties when such drought conditions no longer exist. The Texas Forest Service shall make its services available each day during the Fourth of July and December fireworks seasons to respond to the request of any county for a determination whether drought conditions exist on average in the county.

(2) The Texas Forest Service shall be allowed to take such donations of equipment or funds as necessary to aid in the carrying out of this section.

(c) Upon a determination under this section that drought conditions exist on average in ~~[within all or part of]~~ a specified county, the commissioners court of the ~~[such]~~ county by order may prohibit or restrict the sale or use of restricted fireworks in ~~[all or a portion of]~~ the unincorporated area of the county ~~[where drought conditions have been determined to exist]~~. In addition, during the December fireworks season, the commissioners court of a county by order may restrict or prohibit the sale or use of restricted fireworks in specified areas when conditions on rural acreage in the county not under cultivation for a period of at least 12 months are determined to be extremely hazardous for the danger of fire because of high grass or dry vegetation.

(d) To facilitate compliance with an order adopted under Subsection (c), the order must be adopted before:

(1) April 25 of each year for the Cinco de Mayo fireworks season;

(2) June 15 of each year for the Fourth of July fireworks season; and

(3) ~~[(2)]~~ December 15 of each year for each December fireworks season.

(f) When a county issues an order restricting or prohibiting the sale or use of restricted fireworks under this section, the [The] county may designate one or more areas of appropriate size and accessibility in the county as safe areas where

the use of restricted fireworks is not prohibited, and the legislature encourages a county to designate such an area for that purpose. The safe area may be provided by the county, a municipality within the county, or an individual, business, or corporation. A safe area may be designated in and provided in the geographic area of the regulatory jurisdiction of a municipality if the activity conducted in the safe area is authorized by general law or a municipal regulation or ordinance. An area is considered safe if adequate public safety and fire protection services are provided to the area. A county, municipality, individual, business, or corporation is not liable for injuries or damages resulting from the designation, maintenance, or use of the safe area.

(j) A civil action against a county based on the county's actions under this section must be brought in the appropriate court in that county.

SECTION 8. (a) The changes in law made by this Act apply only to an offense committed on or after the effective date of the applicable section. For purposes of this section, an offense is committed before the effective date of a section of this Act if any element of the offense occurs before that date.

(b) An offense committed before the effective date of a section of this Act is covered by the applicable law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 9. (a) Except as provided by Subsection (b) of this section, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

(b) Section 1 of this Act takes effect January 2, 2008.

Representative W. Smith moved to adopt the conference committee report on **HB 539**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 539** prevailed by (Record 1983): 143 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; Hancock; Hardcastle; Harless; 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; 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; Pitts; Puente; Quintanilla; Raymond; Riddle;

Ritter; Rodriguez; 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 — Hamilton; Madden; Pierson; Rose; Thompson.

SB 1058 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Noriega submitted the conference committee report on **SB 1058**.

SB 1058 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE BURNAM: Could you explain the amendment as it was sent back to us again?

REPRESENTATIVE NORIEGA: Yes. The amendment that Mr. Escobar had offered in Local and Consent Calendars allowed for persons of different campaigns to be an advisory committee for the implementation of this particular reintegration counseling service, and it created a fiscal note, that perhaps could have put the bill in jeopardy. And Representative Escobar, who offered the amendment along with Senator West, worked out the intent with the adjutant generals so that they understand that there is equal representation among those members of the different campaigns to help in the execution of this particular counseling service.

BURNAM: And how would the different campaigns expand the cost, and how did they fix that?

NORIEGA: Well there was the actual cost of that particular amendment, I'm not privy, I can't give you the exact answer to that to how that would have expanded the cost to it, but it came back from the adjutant general's department, but that would have eaten into their budget, which was not appropriate for, given this was for an amendment that came through the committee process.

BURNAM: So did the adjutant general not want all the campaigns included?

NORIEGA: No, that's not the case. The case was it would have added additional fiscal burden to the department which was not considered in their original appropriation request.

BURNAM: So how are they addressing that concern?

NORIEGA: I'm sorry?

BURNAM: So how are they addressing the concern of additional—

NORIEGA: They're addressing that concern based on the conversations you and I are having, based on the conversations that Representative Escobar has had with the adjutant general's office, as well as Senator West. It is our intent that with the implementation of this particular counseling service that those members of the community are included in the execution of these particular counseling services.

REMARKS ORDERED PRINTED

Representative Burnam moved to print remarks between Representative Noriega and Representative Burnam.

The motion prevailed.

Representative Noriega moved to adopt the conference committee report on **SB 1058**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 1058** prevailed by (Record 1984): 141 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; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; 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; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Heflin; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; 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; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent — Creighton; Deshotel; Hamilton; Hernandez; King, P.; Lucio; Thompson.

STATEMENTS OF VOTE

When Record No. 1984 was taken, I was in the house but away from my desk. I would have voted yes.

Creighton

When Record No. 1984 was taken, I was in the house but away from my desk. I would have voted yes.

Lucio

HB 2814 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Eissler submitted the following conference committee report on **HB 2814**:

Austin, Texas, May 26, 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 2814** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Van de Putte
 Janek
 Ogden
 Shapiro
 Zaffirini

Eissler
 Zedler
 Delisi
 Hochberg
 Patrick

On the part of the senate

On the part of the house

HB 2814, A bill to be entitled An Act relating to a pilot project in certain school districts for dual language education in English and another language.

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

SECTION 1. Subchapter A, Chapter 28, Education Code, is amended by adding Sections 28.0052, 28.0053, and 28.0054 to read as follows:

Sec. 28.0052. DUAL LANGUAGE EDUCATION PILOT PROJECT.

(a) The commissioner shall establish a pilot project in school districts selected by the commissioner under which the agency examines dual language education programs and the effect of those programs on a student's ability to graduate from high school.

(b) In selecting school districts under Subsection (a), the commissioner shall:

(1) select districts that will commit to operate a dual language education program for at least three years; and

(2) give preference to a district that:

(A) demonstrates the potential:

(i) for expanding the program through middle school and high school; and

(ii) to offer at least one language program in addition to the language other than English used in the pilot program;

(B) will implement the program at the kindergarten level; and

(C) demonstrates parent, teacher, and community support for the program.

(c) The commissioner may select not more than 10 school districts and not more than 30 campuses to operate a dual language education program under this section.

(d) The commissioner by rule shall, except as provided by Subsection (e), require a district to limit activities of the dual language education program during the first year of the program to planning activities, including:

(1) hiring and training teachers and ensuring teacher certification;

(2) establishing parental and community support for the program; and

(3) acquiring adequate learning materials in both program languages.

(e) A program that applies for the expansion or improvement of an existing dual language education program is eligible for funding under the pilot project only to the extent authorized by the commissioner in compliance with Subsection (c). An existing dual language education program is not subject to the limitations on activities imposed under Subsection (d).

(f) Funding provided for a dual language education program may be used by a district for classroom materials.

(g) The agency shall report to the legislature describing the agency's activities under the pilot project, the effect of the project on grade-level completion and high school graduation rates, and the recommendations arising from the project. The agency shall submit an interim report under this subsection not later than January 1, 2011, and a final report not later than January 1, 2013.

(h) This section expires August 1, 2013.

Sec. 28.0053. DUAL LANGUAGE EDUCATION PILOT PROJECT: COMMUNITY EDUCATIONAL PIPELINE PROGRESS TEAM. (a) Each school district or campus participating in the dual language education pilot project under Section 28.0052 shall establish a community educational pipeline progress team to assist in developing and implementing the dual language education pilot project.

(b) The board of trustees of a participating school district or of a school district in which a participating campus is located shall appoint individuals to the team. The team must include educators, district-level administrators, and parents of students who attend a participating campus. The team may include community leaders and any other persons identified by the board of trustees as having research-based knowledge regarding second-language learning.

(c) The team shall develop an academic improvement plan that describes the manner in which the pilot project should be implemented in the participating school district or campus. In developing the academic improvement plan, the team shall consider:

(1) the educational problems in the district or at the campus that could be mitigated through the implementation of the pilot project; and

(2) the technological and nontechnological resources that are necessary to ensure successful implementation of the pilot project.

(d) The team shall recommend to the board of trustees the manner in which the pilot project funds should be used to implement the academic improvement plan developed under Subsection (c). Annually, the team may recommend to the board any necessary changes in the academic improvement plan. The agency must approve the academic improvement plan or any changes to the plan before disbursing pilot project funds to the board.

(e) The board of trustees of each district participating in the pilot project shall provide an annual progress report to the agency not later than August 1 of each year that the district or campus is participating in the pilot project. The report must state in detail the type of plan used in the district or at the campus and the effect of the pilot project on the district or campus, including:

(1) any effect on the academic progress of students who are participating in a pilot project, as measured by performance on assessment instruments, including assessment instruments administered under Section 39.023;

(2) if applicable, a comparison of student progress at a campus or in a classroom in a school district or campus that is participating in the pilot project as compared to student progress at a campus or in a classroom in that same district or campus that is not participating in the pilot project;

(3) any effect on student attendance or dropout rates;

(4) any effect on student enrollment in high school;

(5) any effect on teacher performance or retention;

(6) any improvement in communications among students, parents, teachers, and administrators;

(7) any improvement in parental involvement in the education of the parent's child;

(8) any effect on community involvement and support for the district or campus; and

(9) any increase in student proficiency in technology that would help prepare students for becoming members of the workforce.

(f) This section expires August 1, 2013.

Sec. 28.0054. CONTRACT FOR LANGUAGE LEARNING SOFTWARE.

(a) To expand language learning opportunities for all public school students and school district or campus employees, including students and employees in school districts or campuses not participating in the dual language education pilot project established under Section 28.0052, the commissioner shall enter into a contract to license language learning software using language immersion methods.

(b) Expenditures under this section must be sufficient to support language learning opportunities for a maximum of one million public school students and employees for a maximum of three years. The commissioner shall make the software available online to public school students and employees across the state not later than January 1, 2008. A campus participating in the pilot project established under Section 28.0052 may have access to the software.

(c) The commissioner may not spend more than \$4 million each year to comply with this section.

(d) A school district may not use the language learning software to supplant a bilingual education, English as a second language, or dual language education program.

(e) Not later than January 1, 2013, the commissioner shall report to the legislature on the utilization and effectiveness of the language learning software.

(f) This section expires August 1, 2013.

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 Eissler moved to adopt the conference committee report on **HB 2814.**

A record vote was requested.

The motion to adopt the conference committee report on **HB 2814** prevailed by (Record 1985): 106 Yeas, 34 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Aycock; Bailey; Bolton; Bonnen; Branch; Burnam; Callegari; Castro; Chavez; Chisum; Cohen; Coleman; Cook, B.; Cook, R.; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; England; Escobar; Farabee; Farias; Farrar; Flores; Frost; Gallego; Garcia; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Hancock; Hardcastle; Heflin; Herrero; Hill; Hochberg; Hodge; Homer; Hopson; Howard, D.; Isett; Jones; Keffer; King, S.; King, T.; Krusee; Latham; Leibowitz; Madden; Mallory Caraway; Martinez; Martinez Fischer; McClendon; McReynolds; Menendez; Merritt; Miles; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Ortiz; Otto; Patrick; Peña; Pickett; Pierson; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Rose; Smith, W.; Solomons; Strama; Straus; Swinford; Talton; Truitt; Vaught; Veasey; Villarreal; Vo; Woolley; Zedler; Zerwas.

Nays — Anderson; Berman; Bohac; Brown, B.; Brown, F.; Christian; Corte; Crabb; Elkins; Flynn; Gattis; Geren; Harless; Harper-Brown; Hartnett; Hilderbran; Howard, C.; Hughes; Jackson; King, P.; Kolkhorst; Kuempel; Laubenberg; Macias; Miller; Orr; Parker; Paxton; Phillips; Riddle; Smith, T.; Smithee; Taylor; Van Arsdale.

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

Absent — Haggerty; Hamilton; Hernandez; Lucio; McCall; Pitts; Thompson; West.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 1985. I intended to vote no.

Callegari

When Record No. 1985 was taken, I was in the house but away from my desk. I would have voted yes.

Lucio

I was shown voting no on Record No. 1985. I intended to vote yes.

T. Smith

SB 228 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Eiland submitted the conference committee report on **SB 228**.

Representative Eiland moved to adopt the conference committee report on **SB 228**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 228** prevailed by (Record 1986): 143 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; Hancock; Hardcastle; Harless; 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; 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 — Hamilton; Hughes; Latham; Puente; Thompson.

STATEMENT OF VOTE

When Record No. 1986 was taken, I was in the house but away from my desk. I would have voted present, not voting.

Puente

HB 3560 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Swinford submitted the following conference committee report on **HB 3560**:

Austin, Texas, May 26, 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 3560** 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	Swinford
Williams	Ritter
Ellis	Gallego
Fraser	Woolley
Brimer	Chisum
On the part of the senate	On the part of the house

HB 3560, A bill to be entitled An Act relating to transferring to the comptroller the duties of the Texas Building and Procurement Commission that do not primarily concern state facilities and renaming the commission the Texas Facilities Commission.

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

ARTICLE 1. TRANSFER OF DUTIES TO COMPTROLLER

SECTION 1.01. Sections 2151.002, 2151.003, and 2151.004, Government Code, are amended to read as follows:

Sec. 2151.002. DEFINITION [~~DEFINITIONS~~]. Except as otherwise provided by this subtitle, in this subtitle, "state agency" [

~~(1) "Commission" means the Texas Building and Procurement Commission.~~

~~(2) "State agency" means:~~

~~(1) [(A)] a department, commission, board, office, or other agency in the executive branch of state government created by the state constitution or a state statute;~~

~~(2) [(B)] the supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council; or~~

~~(3) [(C)] a university system or an institution of higher education as defined by Section 61.003, Education Code, except a public junior college.~~

Sec. 2151.003. REFERENCE. A statutory reference to the General Services Commission, the State Board of Control, ~~[or]~~ the State Purchasing and General Services Commission, or [means] the Texas Building and Procurement Commission means:

(1) the Texas Facilities Commission if the statutory reference concerns:

(A) charge and control of state buildings, grounds, or property;

(B) maintenance or repair of state buildings, grounds, or property;

(C) construction of a state building;

(D) purchase or lease of state buildings, grounds, or property by or

for the state;

(E) child care services for state employees under Chapter 663; or

(F) surplus and salvage property; and

(2) the comptroller in all other circumstances, except as otherwise provided by law.

Sec. 2151.004. TRANSFER AND ALLOCATION OF POWERS AND DUTIES [~~TO DEPARTMENT OF INFORMATION RESOURCES~~]. (a) The powers and duties of the former General Services Commission under Chapter 2170 or other law relating to providing telecommunications services for state government are transferred to the Department of Information Resources.

(b) A reference in law to the General Services Commission that relates to the powers and duties of the former General Services Commission under Chapter 2170 or other law relating to providing telecommunications services for state government is a reference to the Department of Information Resources.

(c) The Texas Facilities Commission retains the powers and duties of the former Texas Building and Procurement Commission relating to charge and control of state buildings, grounds, or property, maintenance or repair of state

buildings, grounds, or property, child care services for state employees under Chapter 663, surplus and salvage property, construction of a state building, or purchase or lease of state buildings, grounds, or property by or for the state.

(d) Except as provided by Subsection (a) or (c) or other law, all other powers and duties of the Texas Building and Procurement Commission are transferred to the comptroller.

SECTION 1.02. Chapter 2151, Government Code, is amended by adding Section 2151.0041 to read as follows:

Sec. 2151.0041. SUNSET PROVISION. (a) The transfer of powers and duties to the comptroller under Section 2151.004(d) and under **HB 3560**, Acts of the 80th Legislature, Regular Session, 2007, is subject to Chapter 325 (Texas Sunset Act).

(b) The Sunset Advisory Commission shall evaluate the transfer of powers and duties to the comptroller under Section 2151.004(d) and under **HB 3560**, Acts of the 80th Legislature, Regular Session, 2007, and present to the 82nd Legislature a report on its evaluation and recommendations in relation to the transfer. The comptroller shall perform all duties in relation to the evaluation that a state agency subject to review under Chapter 325 would perform in relation to a review.

(c) Unless otherwise provided by the legislature by law, on September 1, 2011:

(1) the powers and duties transferred to the comptroller under Section 2151.004(d) and under **HB 3560**, Acts of the 80th Legislature, Regular Session, 2007, are transferred to the Texas Facilities Commission;

(2) a reference in law to the comptroller relating to a power or duty transferred under this subsection means the Texas Facilities Commission;

(3) a rule or form adopted by the comptroller relating to a power or duty transferred under this subsection is a rule or form of the Texas Facilities Commission and remains in effect until altered by the commission;

(4) all obligations, contracts, proceedings, cases, negotiations, funds, and employees of the comptroller relating to a power or duty transferred under this subsection are transferred to the Texas Facilities Commission;

(5) all property and records in the custody of the comptroller relating to a power or duty transferred under this subsection and all funds appropriated by the legislature for purposes related to a power or duty transferred under this subsection are transferred to the Texas Facilities Commission; and

(6) Section 122.0011, Human Resources Code, and the following provisions of the Government Code expire:

(A) Sections 2151.004(c) and (d);

(B) Section 2155.0011;

(C) Section 2155.086;

(D) Section 2155.087;

(E) Section 2156.0011;

(F) Section 2157.0011;

(G) Section 2158.0011;

(H) Section 2161.0011;

- (I) Section 2163.0011;
(J) Section 2170.0011;
(K) Section 2171.0011;
(L) Section 2172.0011;
(M) Section 2176.0011;
(N) Section 2177.0011; and
(O) Section 2262.0011.

SECTION 1.03. The heading to Chapter 2152, Government Code, is amended to read as follows:

CHAPTER 2152. TEXAS FACILITIES ~~[BUILDING AND PROCUREMENT]~~
COMMISSION

SECTION 1.04. Section 2152.001, Government Code, is amended to read as follows:

Sec. 2152.001. COMMISSION. The Texas Facilities ~~[Building and Procurement]~~ Commission is an agency of the state.

SECTION 1.05. Subchapter A, Chapter 2152, Government Code, is amended by adding Section 2152.0011 to read as follows:

Sec. 2152.0011. TEXAS FACILITIES COMMISSION; DEFINITION. (a) The Texas Building and Procurement Commission is renamed the Texas Facilities Commission.

(b) In this chapter, "commission" or "Texas Building and Procurement Commission" means the Texas Facilities Commission.

SECTION 1.06. Subchapter A, Chapter 2155, Government Code, is amended by adding Sections 2155.0011 and 2155.0012 to read as follows:

Sec. 2155.0011. TRANSFER OF DUTIES; REFERENCE. (a) The powers and duties of the commission under this chapter are transferred to the comptroller.

(b) In this chapter, a reference to the commission means the comptroller.

Sec. 2155.0012. AUTHORITY TO ADOPT RULES. The comptroller may adopt rules to efficiently and effectively administer this chapter. Before adopting a rule under this section, the comptroller must conduct a public hearing regarding the proposed rule regardless of whether the requirements of Section 2001.029(b) are met.

SECTION 1.07. Section 2155.003, Government Code, is amended to read as follows:

Sec. 2155.003. CONFLICT OF INTEREST. (a) The chief clerk or any other ~~[A commission member,]~~ employee of the comptroller ~~[, or appointee]~~ may not:

(1) have an interest in, or in any manner be connected with, a contract or bid for a purchase of goods or services by an agency of the state; or

(2) in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation.

(b) The chief clerk or any other ~~[A commission member,]~~ employee of the comptroller ~~[, or appointee]~~ who violates Subsection (a)(2) is subject to dismissal.

(c) In consultation with the comptroller, the Texas Ethics Commission shall adopt rules to implement this section.

(d) The Texas Ethics Commission shall administer and enforce this section and may prepare written opinions regarding this section in accordance with Subchapter D, Chapter 571.

(e) The comptroller must report to the Texas Ethics Commission a campaign contribution from a vendor that bids on or receives a contract under the comptroller's purchasing authority.

SECTION 1.08. Subchapter B, Chapter 2155, Government Code, is amended by adding Sections 2155.086 and 2155.087 to read as follows:

Sec. 2155.086. PROCEDURES FOR AWARDING CERTAIN CONTRACTS. (a) In this section and in Section 2155.087, "chief clerk" means the chief clerk of the comptroller or the chief clerk's designee.

(b) This section applies only to the award of a contract by the comptroller that:

(1) relates to the powers and duties transferred to the comptroller under Section 2151.004(d);

(2) is reasonably expected by the comptroller at the time of the award to have a value of \$100,000 or more over the life of the contract; and

(3) is evaluated based wholly or partly on best value factors other than cost.

(c) This section does not apply to:

(1) any part of the contracting process other than the award, including planning, budgeting, solicitation, pre-response conference, respondent presentation, evaluation, development of staff or evaluation committee recommendations, negotiation, and signature;

(2) a renewal, extension, or amendment of a contract provided for in the written solicitation for the original contract; or

(3) an emergency purchase or other contract award for which delay would create a hazard to life, health, safety, welfare, or property or would cause undue additional cost to the state.

(d) A contract to which this section applies must be awarded in a public meeting chaired and conducted by the chief clerk. The chief clerk shall determine the time and location for the meeting. The meeting must comply with applicable provisions of Chapter 551, including requirements relating to posting notice of the meeting. The comptroller shall also post notice of the meeting on the comptroller's website and in the state business daily. The office of the attorney general shall advise the comptroller on the applicable provisions of Chapter 551.

(e) Before the meeting, the chief clerk may review any written recommendations for the proposed contract award submitted by the comptroller's staff or by an evaluation committee established by the comptroller for the proposed contract. The chief clerk shall make the staff's or committee's final written recommendations available to the public at the meeting.

(f) A contract awarded by the chief clerk under this section is not considered final and does not bind the state until all negotiations are completed, if applicable, and all parties to the contract have signed the final contract.

(g) The comptroller shall post notice of a contract award made in an open meeting under this section on the comptroller's website and in the state business daily.

(h) The comptroller shall post the text of a contract awarded in an open meeting under this section on the comptroller's website and in the state business daily, except for information in a contract that is not subject to disclosure under Chapter 552. Information that is not subject to disclosure under Chapter 552 must be referenced in an appendix that generally describes the information without disclosing the specific content of the information.

Sec. 2155.087. STATEWIDE PROCUREMENT ADVISORY COUNCIL.

(a) In this section, "council" means the Statewide Procurement Advisory Council.

(b) The Statewide Procurement Advisory Council consists of the following four members or their designees:

(1) one member appointed by the governor;

(2) one member appointed by the Texas Facilities Commission;

(3) one member appointed by the Department of Information Resources; and

(4) one member appointed by the Legislative Budget Board.

(c) The comptroller shall adopt rules describing the purpose and tasks of the council as provided by Section 2110.005. Before adopting a rule under this subsection, the comptroller must conduct a public hearing regarding the proposed rule regardless of whether the requirements of Section 2001.029(b) are met.

(d) A quorum of the council shall attend each meeting under Section 2155.086 in which the chief clerk awards a contract. In the meeting, the council shall make recommendations to and advise the chief clerk in a manner consistent with the established purpose and tasks of the council.

SECTION 1.09. Section 2155.144(k), Government Code, is amended to read as follows:

(k) Subject to Section 531.0055(c), the Health and Human Services Commission, in cooperation with the comptroller, shall establish a central contract management database that identifies each contract made with a health and human services agency. The comptroller [~~commission~~] may use the database to monitor health and human services agency contracts, and health and human services agencies may use the database in contracting. A state agency shall send to the comptroller [~~commission~~] in the manner prescribed by the comptroller [~~commission~~] the information the agency possesses that the comptroller [~~commission~~] requires for inclusion in the database.

SECTION 1.10. Section 2155.322(b), Government Code, is amended to read as follows:

(b) If state law requires that a payment for the goods or services be made on a warrant drawn or an electronic funds transfer initiated by the comptroller or a state agency with delegated authority under Section 403.060, promptly after the later of the receipt of the invoice or the receipt of the goods or services, the agency shall send to the comptroller the certification, together with the financial

information and purchase information provided by the invoice and purchase voucher, on a form or in the manner prescribed ~~[agreed to]~~ by the comptroller ~~[and the commission]~~.

SECTION 1.11. Section 2155.323(b), Government Code, is amended to read as follows:

(b) If the comptroller approves the financial information, the comptroller shall determine whether ~~[commission rules require the commission to audit]~~ the purchase information should also be audited under Section 2155.324. ~~[If a commission audit is required, the comptroller shall promptly send the certification and purchase information to the commission using the method and format agreed to by the comptroller and the commission.]~~

SECTION 1.12. Section 2155.324, Government Code, is amended to read as follows:

Sec. 2155.324. PURCHASE [COMMISSION] AUDIT. (a) When ~~[Not later than the eighth day after the date the commission receives the certification and purchase information required by this subchapter from]~~ the comptroller considers a purchase audit to be advisable, the comptroller~~[-, the commission]~~ shall audit the purchase information for compliance with applicable purchasing statutes and [commission] rules.

(b) The comptroller ~~[commission]~~ may determine the auditing method used under this section, including stratified or statistical sampling techniques.

~~[(e) The commission shall notify the comptroller of the results of the commission's audit, using the method and format agreed to by the commission and the comptroller.]~~

SECTION 1.13. Section 2155.325, Government Code, is amended to read as follows:

Sec. 2155.325. PURCHASE [COMMISSION] AUDIT AFTER ISSUANCE OF WARRANT. (a) The comptroller [commission] may audit purchase information after a warrant has been issued if the audit will expedite the payment process.

(b) For audits under this section, the comptroller [commission] by rule shall:

(1) determine the types of purchases that will be audited after a warrant is issued; and

(2) specify the purchase information that a state agency must send to the comptroller ~~[or the commission]~~ before a warrant is issued.

~~[(e) For purchases audited after a warrant is issued, the comptroller shall send the certification and purchase information received by the comptroller under Section 2155.322(b) to the commission under commission rules.]~~

SECTION 1.14. Section 2155.326, Government Code, is amended to read as follows:

Sec. 2155.326. AUDIT BY STATE AUDITOR [UPDATE OF COMMISSION FILES AND RECORDS]. Transactions, processes, and the performance of functions under this chapter and Chapters 2156, 2157, and 2158 are subject to audit by the state auditor under Chapter 321. ~~[To enable the~~

~~commission to update periodically computer records and close purchase order files, the comptroller shall, on request, furnish the commission with information detailing all vouchers paid under this subchapter and Section 2155.132.]~~

SECTION 1.15. Section 2155.381, Government Code, is amended to read as follows:

Sec. 2155.381. INVOICE. (a) The contractor or seller of goods or services contracted for by the comptroller ~~[commission]~~ shall submit an invoice to the ordering agency at the address shown on the purchase order.

(b) The invoice shall be prepared and submitted as provided by ~~[commission]~~ rule of the comptroller.

SECTION 1.16. Section 2155.382(a), Government Code, is amended to read as follows:

(a) After the comptroller approves ~~[and the commission have approved]~~ financial information and purchase information, when advance approval of that information is required by ~~[commission]~~ rule of the comptroller, the comptroller shall draw a warrant on the state treasury for:

- (1) the amount due on the invoice; or
- (2) the amount on the invoice that has been allowed.

SECTION 1.17. Section 2155.503, Government Code, is amended to read as follows:

Sec. 2155.503. RULES. (a) The comptroller ~~[commission]~~ and the department shall adopt rules to implement this subchapter. The rules must:

- (1) establish standard terms for contracts listed on a schedule; and
- (2) maintain consistency with existing purchasing standards.

(b) The comptroller ~~[commission]~~ and the department shall consult with the attorney general ~~[and the comptroller]~~ in developing rules under this section.

SECTION 1.18. Subchapter A, Chapter 2156, Government Code, is amended by adding Sections 2156.0011 and 2156.0012 to read as follows:

Sec. 2156.0011. TRANSFER OF DUTIES; REFERENCE. (a) The powers and duties of the commission under this chapter are transferred to the comptroller.

(b) In this chapter, a reference to the commission means the comptroller.

Sec. 2156.0012. AUTHORITY TO ADOPT RULES. The comptroller may adopt rules to efficiently and effectively administer this chapter. Before adopting a rule under this section, the comptroller must conduct a public hearing regarding the proposed rule regardless of whether the requirements of Section 2001.029(b) are met.

SECTION 1.19. Subchapter A, Chapter 2157, Government Code, is amended by adding Sections 2157.0011 and 2157.0012 to read as follows:

Sec. 2157.0011. TRANSFER OF DUTIES; REFERENCE. (a) The powers and duties of the commission under this chapter are transferred to the comptroller.

(b) In this chapter, a reference to the commission means the comptroller.

Sec. 2157.0012. AUTHORITY TO ADOPT RULES. The comptroller may adopt rules to efficiently and effectively administer this chapter. Before adopting a rule under this section, the comptroller must conduct a public hearing regarding the proposed rule regardless of whether the requirements of Section 2001.029(b) are met.

SECTION 1.20. Subchapter A, Chapter 2158, Government Code, is amended by adding Sections 2158.0011 and 2158.0012 to read as follows:

Sec. 2158.0011. TRANSFER OF DUTIES; REFERENCE. (a) The powers and duties of the commission under this chapter are transferred to the comptroller.

(b) In this chapter, a reference to the commission means the comptroller.

Sec. 2158.0012. AUTHORITY TO ADOPT RULES. The comptroller may adopt rules to efficiently and effectively administer this chapter. Before adopting a rule under this section, the comptroller must conduct a public hearing regarding the proposed rule regardless of whether the requirements of Section 2001.029(b) are met.

SECTION 1.21. Subchapter A, Chapter 2161, Government Code, is amended by adding Sections 2161.0011 and 2161.0012 to read as follows:

Sec. 2161.0011. TRANSFER OF DUTIES; REFERENCE. (a) The powers and duties of the commission under this chapter are transferred to the comptroller.

(b) In this chapter, a reference to the commission means the comptroller.

Sec. 2161.0012. AUTHORITY TO ADOPT RULES. (a) The comptroller may adopt rules to efficiently and effectively administer this chapter. Before adopting a rule under this section, the comptroller must conduct a public hearing regarding the proposed rule regardless of whether the requirements of Section 2001.029(b) are met.

(b) The comptroller shall follow the procedures prescribed by Subchapter B, Chapter 2001, when adopting a new rule or a change to an existing rule that relates to historically underutilized businesses.

SECTION 1.22. Section 2161.061, Government Code, is amended by adding Subsection (e) to read as follows:

(e) A local government or a nonprofit organization that certifies historically underutilized businesses under Subsection (c) or that conducts a certification program described by and approved under Subsection (b) shall make available to the public an online searchable database containing information about historically underutilized businesses, minority business enterprises, women's business enterprises, and disadvantaged business enterprises certified by the local government or nonprofit organization, including:

(1) the name of the business;

(2) the contact person or owner of the business;

(3) the address and telephone number of the business;

(4) the type or category of business, including relevant capabilities of the business and the North American Industry Classification System codes for the business; and

(5) the expiration date of the business's certification.

SECTION 1.23. Sections 2161.123(d) and (e), Government Code, are amended to read as follows:

(d) The commission and the state auditor shall cooperate to develop procedures providing for random periodic monitoring of state agency compliance with this section. The state auditor shall report to the commission a state agency

that is not complying with this section. In determining whether a state agency is making a good faith effort to comply, the state auditor shall consider whether the agency:

- (1) has adopted rules under Section 2161.003;
- (2) has used the commission's directory under Section 2161.064 and other resources to identify historically underutilized businesses that are able and available to contract with the agency;
- (3) made good faith, timely efforts to contact identified historically underutilized businesses regarding contracting opportunities; ~~and~~
- (4) conducted its procurement program in accordance with the good faith effort methodology set out in commission rules; and
- (5) established goals for contracting with historically underutilized businesses in each procurement category based on:

- (A) scheduled fiscal year expenditures; and
- (B) the availability of historically underutilized businesses in each category as determined by rules adopted under Section 2161.002.

(e) In conducting an audit of an agency's compliance with this section or an agency's making of a good faith effort to implement the plan adopted under this section, the state auditor shall ~~not~~ consider the success or failure of the agency to contract with historically underutilized businesses in accordance with the agency's goals described by Subsection (d)(5) ~~[in any specific quantity. The state auditor's review shall be restricted to the agency's procedural compliance with Subsection (d)].~~

SECTION 1.24. Section 2161.125, Government Code, is amended to read as follows:

Sec. 2161.125. CATEGORIZATION BY SEX, RACE, AND ETHNICITY. The comptroller [commission], in cooperation with ~~[the comptroller and]~~ each state agency reporting under this subchapter, shall categorize each historically underutilized business included in a report under this subchapter by sex, race, and ethnicity.

SECTION 1.25. Section 2161.127, Government Code, is amended to read as follows:

Sec. 2161.127. LEGISLATIVE APPROPRIATIONS REQUESTS. (a) Each state agency must include as part of its legislative appropriations request a detailed report for consideration by the budget committees of the legislature that shows the extent to which the agency complied with this chapter and rules of the commission adopted under this chapter during the two calendar years preceding the calendar year in which the request is submitted. To the extent the state agency did not comply, the report must demonstrate the reasons for that fact. The extent to which a state agency complies with this chapter and rules of the commission adopted under this chapter is considered a key performance measure for purposes of the appropriations process.

(b) The report under Subsection (a) must include:

- (1) the agency's goals established under Section 2161.123(d)(5) for contracting with historically underutilized businesses during the two calendar years preceding the calendar year in which the request is submitted;

(2) a statement regarding whether the goals established under Section 2161.123(d)(5) were met during the two calendar years preceding the calendar year in which the request is submitted; and

(3) if the goals established under Section 2161.123(d)(5) were not met during the two calendar years preceding the calendar year in which the request is submitted:

(A) a statement of the percentage by which the agency's actual use of historically underutilized businesses deviated from the agency's goals; and

(B) an explanation of why the goals were not met.

SECTION 1.26. Section 2162.051(a), Government Code, is amended to read as follows:

(a) The State Council on Competitive Government consists of the following individuals or the individuals they designate:

(1) the governor;

(2) the lieutenant governor;

(3) the comptroller;

(4) the speaker of the house of representatives;

(5) the ~~[commissioner's]~~ presiding officer of the Texas Facilities Commission; ~~and~~

(6) the commissioner of the Texas Workforce Commission representing labor; and

(7) the land commissioner.

SECTION 1.27. Subchapter B, Chapter 2162, Government Code, is amended by adding Section 2162.053 to read as follows:

Sec. 2162.053. ADMINISTRATION BY COMPTROLLER. (a) The comptroller shall provide offices for the council and shall provide the council with legal, technical, administrative, and other support necessary to carry out its powers and duties.

(b) Any administrative powers or duties of the Texas Building and Procurement Commission with respect to the council are transferred to the comptroller.

SECTION 1.28. Section 2162.102(c), Government Code, is amended to read as follows:

(c) In performing its duties under this chapter, the council may:

(1) require a state agency to conduct a hearing, study, review, or cost estimate, including an agency in-house cost estimate or a management study, concerning any aspect of a service identified under Subsection (a);

(2) develop and require state agencies to use methods to accurately and fairly estimate and account for the cost of providing a service identified under Subsection (a);

(3) require that a service identified under Subsection (a) be submitted to competitive bidding or another process that creates competition with private commercial sources;

(4) prescribe, after consulting affected state agencies, the specifications and conditions of purchase procedures that must be followed by the comptroller [~~commission~~] and a state agency or a private commercial source engaged in competitive bidding to provide a service identified under Subsection (a);

(5) award a contract to a state agency providing the service, another state agency, a private commercial source, or a combination of those entities, if the bidder presents the best and most reasonable bid, which is not necessarily the lowest bid; and

(6) determine the terms of a contract for service or interagency contract to provide a service identified under Subsection (a).

SECTION 1.29. Chapter 2163, Government Code, is amended by adding Sections 2163.0011 and 2163.0012 to read as follows:

Sec. 2163.0011. TRANSFER OF DUTIES; REFERENCE. (a) The powers and duties of the commission under this chapter are transferred to the comptroller.

(b) In this chapter, a reference to the commission means the comptroller.

Sec. 2163.0012. AUTHORITY TO ADOPT RULES. The comptroller may adopt rules to efficiently and effectively administer this chapter. Before adopting a rule under this section, the comptroller must conduct a public hearing regarding the proposed rule regardless of whether the requirements of Section 2001.029(b) are met.

SECTION 1.30. Subchapter A, Chapter 2165, Government Code, is amended by adding Sections 2165.0011 and 2165.0012 to read as follows:

Sec. 2165.0011. DEFINITION. In this chapter, "commission" means the Texas Facilities Commission.

Sec. 2165.0012. AUTHORITY TO ADOPT RULES. The commission may adopt rules to efficiently and effectively administer this chapter.

SECTION 1.31. Section 2166.001, Government Code, is amended by amending Subdivision (1) and adding Subdivision (1-a) to read as follows:

(1) "Commission" means the Texas Facilities Commission.

(1-a) "Construction" includes acquisition and reconstruction.

SECTION 1.32. Subchapter A, Chapter 2167, Government Code, is amended by adding Section 2167.0011 to read as follows:

Sec. 2167.0011. DEFINITION. In this chapter, "commission" means the Texas Facilities Commission.

SECTION 1.33. Subchapter A, Chapter 2170, Government Code, is amended by adding Sections 2170.0011 and 2170.0012 to read as follows:

Sec. 2170.0011. TRANSFER OF DUTIES; REFERENCE. (a) Any remaining powers and duties of the commission under this chapter are transferred to the comptroller.

(b) Subject to Section 2151.004(b), in this chapter a reference to the commission means the comptroller.

Sec. 2170.0012. AUTHORITY TO ADOPT RULES. The comptroller may adopt rules to efficiently and effectively administer the comptroller's powers and duties under this chapter. Before adopting a rule under this section, the comptroller must conduct a public hearing regarding the proposed rule regardless of whether the requirements of Section 2001.029(b) are met.

SECTION 1.34. Subchapter A, Chapter 2171, Government Code, is amended by adding Section 2171.0011 to read as follows:

Sec. 2171.0011. TRANSFER OF DUTIES; REFERENCE. (a) The powers and duties of the commission under this chapter are transferred to the comptroller.

(b) In this chapter, a reference to the commission means the comptroller.

SECTION 1.35. Section 2171.002, Government Code, is amended to read as follows:

Sec. 2171.002. RULES. (a) The comptroller [commission] shall adopt rules to implement this chapter, including rules related to:

(1) the structure of the comptroller's [commission's] travel agency contracts;

(2) the procedures the comptroller [commission] uses in requesting and evaluating bids or proposals for travel agency contracts; and

(3) the use by state agencies of negotiated contract rates for travel services.

(b) Before adopting a rule under this section, the comptroller must conduct a public hearing regarding the proposed rule regardless of whether the requirements of Section 2001.029(b) are met.

SECTION 1.36. Section 2171.056(e), Government Code, is amended to read as follows:

(e) The comptroller [commission] shall adopt rules related to exemptions from the prohibition prescribed by Subsection (b). ~~[To facilitate the audit of the travel vouchers, the commission shall consult with the comptroller before the commission adopts rules or procedures under Subsection (b).]~~

SECTION 1.37. Chapter 2172, Government Code, is amended by adding Sections 2172.0011 and 2172.0012 to read as follows:

Sec. 2172.0011. TRANSFER OF DUTIES; REFERENCE. (a) The powers and duties of the commission under this chapter are transferred to the comptroller.

(b) In this chapter, a reference to the commission means the comptroller.

Sec. 2172.0012. AUTHORITY TO ADOPT RULES. The comptroller may adopt rules to efficiently and effectively administer this chapter. Before adopting a rule under this section, the comptroller must conduct a public hearing regarding the proposed rule regardless of whether the requirements of Section 2001.029(b) are met.

SECTION 1.38. Section 2175.001, Government Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Commission" means the Texas Facilities Commission.

SECTION 1.39. Subchapter A, Chapter 2176, Government Code, is amended by adding Section 2176.0011 to read as follows:

Sec. 2176.0011. TRANSFER OF DUTIES; REFERENCE. (a) The powers and duties of the commission under this chapter are transferred to the comptroller.

(b) In this chapter, a reference to the commission means the comptroller.

SECTION 1.40. Section 2176.053, Government Code, is amended to read as follows:

Sec. 2176.053. DELIVERY OF STATE WARRANTS. State warrants may be delivered in a manner agreed to by the comptroller~~[-the commission,]~~ and the affected agency.

SECTION 1.41. Section 2176.110, Government Code, is amended to read as follows:

Sec. 2176.110. RULES. The comptroller ~~[commission]~~ shall adopt rules for state agencies to implement this chapter ~~[subchapter]~~. Before adopting a rule under this section, the comptroller must conduct a public hearing regarding the proposed rule regardless of whether the requirements of Section 2001.029(b) are met.

SECTION 1.42. Subchapter A, Chapter 2177, Government Code, is amended by adding Sections 2177.0011 and 2177.0012 to read as follows:

Sec. 2177.0011. TRANSFER OF DUTIES; REFERENCE. (a) The powers and duties of the commission under this chapter are transferred to the comptroller.

(b) In this chapter, a reference to the commission means the comptroller.

Sec. 2177.0012. AUTHORITY TO ADOPT RULES. The comptroller may adopt rules to efficiently and effectively administer this chapter. Before adopting a rule under this section, the comptroller must conduct a public hearing regarding the proposed rule regardless of whether the requirements of Section 2001.029(b) are met.

SECTION 1.43. Section 22.008(d), Government Code, is amended to read as follows:

(d) The reporter shall return the record, with briefs and opinions, to the clerk when the report is completed and from time to time shall deliver the reports to the comptroller ~~[State Purchasing and General Services Commission]~~ for publication. Each volume shall be copyrighted in the name of the reporter, who immediately on delivery of the edition shall transfer and assign it to the state. The edition shall be electrotyped. The state owns the plates, and the comptroller ~~[State Purchasing and General Services Commission]~~ shall preserve them.

SECTION 1.44. Section 325.017(e), Government Code, is amended to read as follows:

(e) Unless the governor designates an appropriate state agency as prescribed by Subsection (f), property and records in the custody of an abolished state agency or advisory committee on September 1 of the even-numbered year after abolishment shall be transferred to the comptroller ~~[State Purchasing and General Services Commission]~~. If the governor designates an appropriate state agency, the property and records shall be transferred to the designated state agency.

SECTION 1.45. Section 403.251, Government Code, is amended to read as follows:

Sec. 403.251. ADDITIONAL DUTIES OF COMPTROLLER ~~[COMMISSION]~~. The comptroller ~~[commission]~~ shall treat documentation submitted ~~[to the commission]~~ by a state agency as part of the procedure for replenishing a petty cash account as a proposed expenditure of appropriated funds. The comptroller ~~[commission]~~ shall follow its usual procedures for

reviewing purchases. The comptroller [~~commission~~] shall give the agency a written approval or disapproval of each disbursement from the petty cash account.

SECTION 1.46. Section 441.106, Government Code, is amended to read as follows:

Sec. 441.106. PAYMENT FOR PRINTING OF STATE PUBLICATIONS. If a state agency's printing is done by contract, an account for the printing may not be approved and a warrant may not be issued unless the agency first furnishes to the comptroller [~~Texas Building and Procurement Commission~~] a receipt from the state librarian for the publication or a written waiver from the state librarian exempting the publication from this subchapter.

SECTION 1.47. Sections 441.194(a) and (b), Government Code, are amended to read as follows:

(a) Unless otherwise provided by law, the comptroller [~~General Services Commission~~] shall take custody of the records of a state agency that is abolished by the legislature and whose duties and responsibilities are not transferred to another state agency.

(b) Unless the requirement is waived by the state records administrator, the records management officer of the comptroller [~~General Services Commission~~], or of another state agency that receives custody of the records pursuant to law, shall prepare and submit to the state archivist and the state records administrator a list of the records of the abolished state agency within 180 days of the effective date of the agency's abolition.

SECTION 1.48. Section 444.021(a), Government Code, is amended to read as follows:

(a) The commission shall:

(1) foster the development of a receptive climate for the arts that will culturally enrich and benefit state citizens in their daily lives;

(2) make visits and vacations to the state more appealing to the world;

(3) attract, through appropriate programs of publicity and education, additional outstanding artists to become state residents;

(4) direct activities such as the sponsorship of lectures and exhibitions and the central compilation and dissemination of information on the progress of the arts in the state;

(5) provide advice to the comptroller [~~General Services commission~~], Texas Historical Commission, Texas State Library, Texas Tourist Development Agency, Texas Department of Transportation, and other state agencies to provide a concentrated state effort in encouraging and developing an appreciation for the arts in the state;

(6) provide advice relating to the creation, acquisition, construction, erection, or remodeling by the state of a work of art; and

(7) provide advice, on request of the governor, relating to the artistic character of buildings constructed, erected, or remodeled by the state.

SECTION 1.49. Section 465.0082, Government Code, is amended to read as follows:

Sec. 465.0082. PURCHASING RULES. The commission shall adopt rules to guide its purchases of supplies, materials, services, and equipment to carry out eligible undertakings as defined by Section 465.021. The commission shall use as a guide, whenever consistent with the commission's purposes, the rules of the comptroller [~~State Purchasing and General Services Commission~~].

SECTION 1.50. Section 465.018(b), Government Code, is amended to read as follows:

(b) This section does not prohibit the commission from using the comptroller's purchasing [~~General Services Commission's~~] services.

SECTION 1.51. Section 466.104, Government Code, is amended to read as follows:

Sec. 466.104. ASSISTANCE OF COMPTROLLER [~~GENERAL SERVICES COMMISSION~~]. (a) On request of the executive director, the comptroller [~~General Services Commission~~] shall assist the executive director in:

(1) acquiring facilities, supplies, materials, equipment, and services under Subtitle D, Title 10; or

(2) establishing procedures for the executive director's accelerated acquisition of facilities, supplies, materials, equipment, and services for the operation of the lottery.

(b) The comptroller may request assistance from the Texas Facilities Commission in performing its facilities-related duties under this section.

SECTION 1.52. Section 481.027(f), Government Code, is amended to read as follows:

(f) The comptroller [~~General Services Commission~~] may, at the request of a state agency, provide to the agency services exempted from the application of Subtitle D, Title 10 under Subsection (e). Chapter 771 does not apply to services provided under this subsection. The comptroller [~~commission~~] shall establish a system of charges and billings that ensures recovery of the cost of providing the services and shall submit a purchase voucher or a journal voucher, after the close of each month, to the agency for which services were performed.

SECTION 1.53. Section 496.0515(b), Government Code, is amended to read as follows:

(b) The department shall promulgate procedures for the purpose of purchasing under Subsection (a). The department shall file copies of the procedures promulgated under this subsection with the comptroller [~~General Services Commission~~].

SECTION 1.54. Section 497.024(b), Government Code, is amended to read as follows:

(b) If the comptroller [~~General Services Commission~~] determines that an article or product produced by the office under this subchapter does not meet the requirements of an agency of the state or a political subdivision, or that the office has determined that the office is unable to fill a requisition for an article or product, the agency or subdivision may purchase the article or product from another source.

SECTION 1.55. Sections 497.025(a) and (c), Government Code, are amended to read as follows:

(a) An agency of the state that purchases articles and products under this subchapter must requisition the purchase through the comptroller [~~General Services Commission~~] except for purchases of articles or products not included in an established contract. The purchase of articles or products not included in an established contract and that do not exceed the dollar limits established under Section 2155.132 may be acquired directly from the office on the agency's obtaining an informal or a formal quotation for the item and issuing a proper purchase order to the office. The comptroller [~~General Services Commission~~] and the department shall enter into an agreement to expedite the process by which agencies are required to requisition purchases of articles or products through the comptroller [~~commission~~].

(c) If an agency or political subdivision purchasing goods under this subchapter desires to purchase goods or articles from the office, it may do so without complying with any other state law otherwise requiring the agency or political subdivision to request competitive bids for the article or product. Nothing herein shall be interpreted to require a political subdivision to purchase goods or articles from the office if the political subdivision determines that the goods or articles can be purchased elsewhere at a lower price. An agency may decline to purchase goods or articles from the office if the agency determines, after giving the office a final opportunity to negotiate on price, and the comptroller [~~General Services Commission~~] certifies, that the goods or articles can be purchased elsewhere at a lower price.

SECTION 1.56. Section 497.026, Government Code, is amended to read as follows:

Sec. 497.026. PRICES. The office and the comptroller [~~General Services Commission~~] shall determine the sales price of articles and products produced under this subchapter.

SECTION 1.57. Section 497.027, Government Code, is amended to read as follows:

Sec. 497.027. SPECIFICATIONS. (a) The comptroller [~~General Services Commission~~] shall establish specifications for articles and products produced under this subchapter. An article or product produced under this subchapter must meet specifications established under this subsection in effect when the article or product is produced.

(b) The office may manufacture articles and products to meet commercial specifications for the article or product if the comptroller [~~General Services Commission~~] has not established specifications for the article or product and the comptroller [~~commission~~] approves the commercial specifications.

SECTION 1.58. Section 497.029, Government Code, is amended to read as follows:

Sec. 497.029. NEW ARTICLES AND PRODUCTS. The comptroller [~~General Services Commission~~] may request the office to produce additional articles or products under this subchapter.

SECTION 1.59. Section 497.030, Government Code, is amended to read as follows:

Sec. 497.030. COMPTRROLLER ~~[GENERAL SERVICES COMMISSION]~~ REPORTS. (a) Not later than the 31st day before the first day of each fiscal year, the comptroller ~~[General Services Commission]~~ shall submit to the office a report that summarizes the types and amounts of articles and products sold under this subchapter in the preceding nine months.

(b) Not later than the 100th day after the last day of each fiscal year, the comptroller ~~[General Services Commission]~~ shall submit to the office a report that states the types and amounts of articles and products sold under this subchapter in the preceding fiscal year.

(c) A report submitted by the comptroller ~~[General Services Commission]~~ under this section must describe the articles and products to the extent possible in the manner those articles and products are described in catalogs prepared under Section 497.028.

SECTION 1.60. Section 531.0312(b), Government Code, is amended to read as follows:

(b) The commission shall cooperate with the Records Management Interagency Coordinating Council and the comptroller ~~[General Services Commission]~~ to establish a single method of categorizing information about health and human services to be used by the Records Management Interagency Coordinating Council and the Texas Information and Referral Network. The network, in cooperation with the council and the comptroller ~~[General Services Commission]~~, shall ensure that:

(1) information relating to health and human services is included in each residential telephone directory published by a for-profit publisher and distributed to the public at minimal or no cost; and

(2) the single method of categorizing information about health and human services is used in a residential telephone directory described by Subdivision (1).

SECTION 1.61. Section 663.001(3), Government Code, is amended to read as follows:

(3) "Commission" means the Texas Facilities ~~[General Services Commission]~~.

SECTION 1.62. Sections 791.025(a) and (b), Government Code, are amended to read as follows:

(a) A local government, including a council of governments, may agree with another local government or with the state or a state agency, including the comptroller ~~[General Services Commission]~~, to purchase goods and services.

(b) A local government, including a council of governments, may agree with another local government, including a nonprofit corporation that is created and operated to provide one or more governmental functions and services, or with the state or a state agency, including the comptroller ~~[General Services Commission]~~, to purchase goods and any services reasonably required for the installation, operation, or maintenance of the goods. This subsection does not apply to services provided by firefighters, police officers, or emergency medical personnel.

SECTION 1.63. Section 825.103(d), Government Code, is amended to read as follows:

(d) Notwithstanding any other law, the retirement system has exclusive authority over the purchase of goods and services using money other than money appropriated from the general revenue fund, including specifically money from trusts under the administration of the retirement system, and Subtitle D, Title 10, does not apply to the retirement system with respect to that money. The retirement system shall acquire goods or services by procurement methods approved by the board of trustees or the board's designee. For purposes of this subsection, goods and services include all professional and consulting services and utilities as well as supplies, materials, equipment, skilled or unskilled labor, and insurance. The comptroller [~~Texas Building and Procurement Commission~~] shall procure goods or services for the retirement system at the request of the retirement system, and the retirement system may use the services of the comptroller [~~that commission~~] in procuring goods or services.

SECTION 1.64. Section 2051.052, Government Code, is amended to read as follows:

Sec. 2051.052. CANCELLATION OF PUBLISHING CONTRACT. The comptroller [~~General Services Commission~~] or a district or county official required to publish a notice may cancel a contract executed by the comptroller [~~commission~~] or official for the publication if the comptroller [~~commission~~] or official determines that the newspaper charges a rate higher than the legal rate.

SECTION 1.65. Section 2054.057(a), Government Code, is amended to read as follows:

(a) The department, with the cooperation of the comptroller [~~the General Services Commission,~~] and other appropriate state agencies, shall develop and implement a program to train state agency personnel in effectively negotiating contracts for the purchase of information resources technologies.

SECTION 1.66. Section 2101.038, Government Code, is amended to read as follows:

Sec. 2101.038. DUTIES OF STATE AUDITOR. The state auditor, when reviewing the operation of a state agency, shall audit for compliance with the uniform statewide accounting system, the comptroller's rules, and the Legislative Budget Board's performance and workload measures. The state auditor shall also audit state agencies that make purchases that are exempted from the purchasing authority of the comptroller [~~General Services Commission~~] or that make purchases under delegated purchasing authority for compliance with applicable provisions of Subtitle D, except that this section does not require the state auditor to audit purchases made under Section 51.9335, Education Code, or made under Section 73.115, Education Code. The state auditor shall notify the comptroller, the governor, the lieutenant governor, the speaker of the house of representatives, and the Legislative Budget Board as soon as practicable when a state agency is not in compliance.

SECTION 1.67. Section 2103.032(a), Government Code, is amended to read as follows:

(a) The comptroller by rule may establish a system for state agencies to submit and approve electronically vouchers if the comptroller determines that the system will facilitate the operation and administration of the uniform statewide accounting system. The comptroller may establish an electronic method to approve a voucher submitted by a state agency [~~and may establish an electronic system for the approval of vouchers by the General Services Commission~~].

SECTION 1.68. Sections 2113.103(a), (c), and (d), Government Code, are amended to read as follows:

(a) A state agency should use the most cost-effective means of postal service available. A state agency may use appropriated money to purchase any form of mailing service available from the United States Postal Service that results in lower cost to the agency and affords service comparable in quality to other available postal services. The comptroller [~~General Services Commission~~] shall assist state agencies in determining the types and comparability of postal services available from the United States Postal Service.

(c) An agency other than an institution of higher education as defined by Section 61.003, Education Code, that spends for postage in a fiscal year an amount that exceeds the dollar amount set by the General Appropriations Act as the maximum expenditure for postage shall purchase or rent a postage meter machine and record all purchases of postage on the machine except purchases of postage for employees in field offices and traveling employees. The rental of a postage meter machine by a state agency, including an institution of higher education, the legislature, or an agency in the legislative branch of state government, must be from a company approved by the comptroller [~~General Services Commission~~]. The comptroller [~~General Services Commission~~] by rule shall adopt procedures for the renting entity to pay for postage.

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

- (1) to an authorized petty cash account;
- (2) to a state employee for an emergency purchase of postage or emergency payment of post office box rent;
- (3) that is received by a state agency for authorized services and is appropriated directly to the receiving agency; or
- (4) under a contract for mailing services that may include postage, if the contract has been approved by the comptroller [~~General Services Commission~~].

SECTION 1.69. Section 2113.301(h), Government Code, is amended to read as follows:

(h) The comptroller [~~Texas Building and Procurement Commission~~] shall appoint a task force to develop design recommendations that are to be used for state facilities and that encourage rain harvesting and water recycling by state agencies using appropriated money to finance a capital expenditure for a state facility purpose.

SECTION 1.70. Section 2203.005(b), Government Code, is amended to read as follows:

(b) The state agency shall file with the comptroller [~~General Services Commission~~] a copy of all contracts between the state agency and the vendor related to the vending machine and a written description of the location of the vending machine.

SECTION 1.71. Sections 2205.004(a) and (c), Government Code, are amended to read as follows:

(a) The board is composed of:

- (1) a member appointed by the governor;
- (2) a member appointed by the lieutenant governor;
- (3) a member appointed by the speaker of the house of representatives;

and

(4) a representative of the comptroller [~~Texas Building and Procurement Commission, designated from time to time by the presiding officer of the commission~~].

(c) The representative of the comptroller [~~Texas Building and Procurement Commission~~] is an ex officio, nonvoting member of the board and serves only in an advisory capacity.

SECTION 1.72. Section 2205.012(a), Government Code, is amended to read as follows:

(a) The board may employ and compensate staff as provided by legislative appropriation or may use staff provided by the comptroller [~~General Services Commission~~] or the state auditor's office.

SECTION 1.73. Section 2251.003, Government Code, is amended to read as follows:

Sec. 2251.003. RULES. The comptroller [~~General Services Commission~~] shall establish procedures and adopt rules to administer this chapter, ~~except that the commission may not establish a procedure or adopt a rule that conflicts with a procedure established or a rule adopted by the comptroller under Section 2251.026(†)].~~ Before adopting a rule under this section, the comptroller must conduct a public hearing regarding the proposed rule regardless of whether the requirements of Section 2001.029(b) are met.

SECTION 1.74. Section 2252.003(a), Government Code, is amended to read as follows:

(a) The comptroller [~~General Services Commission~~] annually shall publish in the Texas Register:

(1) a list showing each state that regulates the award of a governmental contract to a bidder whose principal place of business is not located in that state; and

(2) the citation to and a summary of each state's most recent law or regulation relating to the evaluation of a bid from and award of a contract to a bidder whose principal place of business is not located in that state.

SECTION 1.75. Section 2254.040, Government Code, is amended to read as follows:

Sec. 2254.040. PROCUREMENT BY COMPTROLLER [~~GENERAL SERVICES COMMISSION~~]. (a) The comptroller [~~General Services Commission~~] may, on request of a state agency, procure for the agency consulting services that are covered by this subchapter.

(b) The comptroller [~~commission~~] may require reimbursement for the costs it incurs in procuring the services.

SECTION 1.76. Sections 2261.001(a) and (c), Government Code, are amended to read as follows:

(a) This chapter applies only to each procurement of goods or services made by a state agency that is neither made by the comptroller [~~General Services Commission~~] nor made under purchasing authority delegated to the agency by or under Section 51.9335 or 73.115, Education Code, or Section 2155.131 or [;] 2155.132 [~~or 2155.133~~].

(c) The comptroller [~~General Services Commission~~] on request shall determine whether a procurement or type of procurement:

(1) is made under purchasing authority delegated to an agency by or under Section 2155.131 or [;] 2155.132 [~~or 2155.133~~]; or

(2) is made under some other source of purchasing authority.

SECTION 1.77. Subchapter A, Chapter 2262, Government Code, is amended by adding Section 2262.0011 to read as follows:

Sec. 2262.0011. TRANSFER OF DUTIES; REFERENCE. (a) The powers and duties of the commission under this chapter are transferred to the comptroller.

(b) In this chapter, a reference to the commission means the comptroller.

SECTION 1.78. Section 2302.002, Government Code, is amended to read as follows:

Sec. 2302.002. COMPOSITION OF COUNCIL. The council is composed of:

(1) one representative with knowledge of cogeneration from each of the following agencies, appointed by and serving at the pleasure of the agency's presiding officer:

(A) the commission;

(B) the Railroad Commission of Texas; and

(C) [~~the General Services Commission; and~~

~~(D)~~ the Texas Natural Resource Conservation Commission;

(2) one representative of the office of the attorney general, appointed by the attorney general;

(3) one representative of the comptroller, appointed by the comptroller;
and

(4) [~~(3)~~] one representative of higher education, appointed by the governor.

SECTION 1.79. Section 12.029(c), Agriculture Code, is amended to read as follows:

(c) The department shall file the policies established under this section with the comptroller [~~State Purchasing and General Services Commission~~] and with the Texas Department of Commerce or its successor in function. The comptroller [~~commission~~] shall conduct an analysis of the department's policies and the

policies' effectiveness and shall report the analysis to the governor, lieutenant governor, and speaker of the house of representatives not later than December 31 of each even-numbered year.

SECTION 1.80. Section 13.112, Agriculture Code, is amended to read as follows:

Sec. 13.112. TESTS FOR STATE INSTITUTIONS. As requested by the comptroller [~~State Purchasing and General Services Commission~~] or the governing body of a state institution, the department shall test each weight or measure used by a state institution for any purpose, including a weight or measure used in checking the receipt and distribution of supplies. The department shall report results of the test to the chairman of the governing body of the institution.

SECTION 1.81. Section 49.004(d), Agriculture Code, is amended to read as follows:

(d) Supplies, materials, services, and equipment purchased with funds obtained under this section are not subject to the purchasing [~~General Services Commission~~] authority of the comptroller.

SECTION 1.82. Section 201.105(c), Agriculture Code, is amended to read as follows:

(c) A conservation district may make any purchase of machinery or equipment through the comptroller [~~State Purchasing and General Services Commission~~] under the terms and rules provided by law for purchases by the state or political subdivisions.

SECTION 1.83. Section 34.001, Education Code, is amended to read as follows:

Sec. 34.001. PURCHASE OF MOTOR VEHICLES. (a) A school district may purchase school motor vehicles through the comptroller [~~General Services Commission~~] or through competitive bidding under Subchapter B, Chapter 44.

(b) The comptroller [~~General Services Commission~~] may adopt rules as necessary to implement Subsection (a). Before adopting a rule under this subsection, the comptroller must conduct a public hearing regarding the proposed rule regardless of whether the requirements of Section 2001.029(b), Government Code, are met.

SECTION 1.84. Section 34.006, Education Code, is amended to read as follows:

Sec. 34.006. SALE OF BUSES. (a) At the request of a school district, the comptroller [~~General Services Commission~~] shall dispose of a school bus.

(b) A school district is not required to dispose of a school bus through the comptroller [~~General Services Commission~~].

SECTION 1.85. Section 106.54, Education Code, is amended to read as follows:

Sec. 106.54. BIENNIAL REPORT. True and full accounts shall be kept by the board and by the employees of the university of all funds collected from all sources by the university, all the sums paid out by it, and the persons to whom and the purposes for which the sums are paid. The board shall print biennially a complete report of all sums collected, all expenditures, and the sums remaining

on hand. The report shall be printed in even-numbered years between September 1 and January 1. It shall show the true condition of all funds as of the preceding August 1, and shall show all collections and expenditures for the preceding two years. The board shall furnish copies of the report to the governor, comptroller, state auditor, and attorney general~~], and not less than three copies to the General Services Commission].~~ The board shall furnish a copy to each member of the House Appropriations Committee, the Senate Finance Committee, and the House and Senate committees on education of each regular session of the legislature within one week after the committees are appointed.

SECTION 1.86. Section 107.66, Education Code, is amended to read as follows:

Sec. 107.66. REQUISITION OF FURNISHINGS, EQUIPMENT, ETC. The board may make requisition to the comptroller ~~[General Services Commission]~~ for furniture, furnishings, equipment, and appointments required for the proper use and enjoyment of improvements erected by the board, and the comptroller ~~[General Services Commission]~~ may purchase and pay for the furnishings, equipment, and appointments.

SECTION 1.87. Section 141.003(c), Education Code, is amended to read as follows:

(c) Supplies, materials, services, and equipment purchased with these funds shall not be subject to the purchasing ~~[State Purchasing and General Services Commission]~~ authority of the comptroller.

SECTION 1.88. Section 142.004(e), Education Code, is amended to read as follows:

(e) Supplies, materials, services, and equipment purchased with these funds shall not be subject to the purchasing ~~[State Purchasing and General Services Commission]~~ authority of the comptroller.

SECTION 1.89. Section 143.005(f), Education Code, is amended to read as follows:

(f) Supplies, materials, services, and equipment purchased with these funds shall not be subject to the purchasing ~~[State Purchasing and General Services Commission]~~ authority of the comptroller.

SECTION 1.90. Section 152.004(e), Education Code, is amended to read as follows:

(e) Supplies, materials, services, or equipment purchased by a public junior college or public technical institute with money received under this chapter are not subject to the purchasing authority of the comptroller ~~[General Services Commission]~~.

SECTION 1.91. Section 361.423, Health and Safety Code, is amended to read as follows:

Sec. 361.423. RECYCLING MARKET DEVELOPMENT IMPLEMENTATION PROGRAM. (a) The commission, the comptroller ~~[Texas Building and Procurement Commission]~~, and other consenting state agencies as appropriate shall regularly coordinate the recycling activities of state agencies and

shall each pursue an economic development strategy that focuses on the state's waste management priorities established by Section 361.022 and that includes development of recycling industries and markets as an integrated component.

(b) The commission and the comptroller [~~Texas Building and Procurement Commission~~], on an ongoing basis, shall jointly:

(1) identify existing economic and regulatory incentives and disincentives for creating an optimal market development strategy;

(2) analyze or take into consideration the market development implications of:

(A) the state's waste management policies and regulations;

(B) existing and potential markets for plastic, glass, paper, lead-acid batteries, tires, compost, scrap gypsum, coal combustion by-products, and other recyclable materials; and

(C) the state's tax structure and overall economic base;

(3) examine and make policy recommendations regarding the need for changes in or the development of:

(A) economic policies that affect transportation, such as those embodied in freight rate schedules;

(B) tax incentives and disincentives;

(C) the availability of financial capital including grants, loans, and venture capital;

(D) enterprise zones;

(E) managerial and technical assistance;

(F) job-training programs;

(G) strategies for matching market supply and market demand for recyclable materials, including intrastate and interstate coordination;

(H) the state recycling goal;

(I) public-private partnerships;

(J) research and development;

(K) government procurement policies;

(L) educational programs for the public, corporate and regulated communities, and government entities; and

(M) public health and safety regulatory policies;

(4) establish a comprehensive statewide strategy to expand markets for recycled products in Texas;

(5) provide information and technical assistance to small and disadvantaged businesses, business development centers, chambers of commerce, educational institutions, and nonprofit associations on market opportunities in the area of recycling; and

(6) with the cooperation of the Office of State-Federal Relations, assist communities and private entities in identifying state and federal grants pertaining to recycling and solid waste management.

(c) In carrying out this section, the commission and the comptroller [~~Texas Building and Procurement Commission~~] may obtain research and development and technical assistance from the Hazardous Waste Research Center at Lamar University at Beaumont or other similar institutions.

(d) In carrying out this section, the commission and the ~~comptroller [Texas Building and Procurement Commission]~~ shall utilize the pollution prevention advisory committee as set out in Section 361.0215 of the Health and Safety Code.

SECTION 1.92. Section 361.425(a), Health and Safety Code, is amended to read as follows:

(a) A state agency, state court or judicial agency, a university system or institution of higher education, a county, municipality, school district, or special district shall:

(1) in cooperation with the ~~comptroller [General Services Commission]~~ or the commission establish a program for the separation and collection of all recyclable materials generated by the entity's operations, including, at a minimum, aluminum, steel containers, aseptic packaging and polycoated paperboard cartons, high-grade office paper, and corrugated cardboard;

(2) provide procedures for collecting and storing recyclable materials, containers for recyclable materials, and procedures for making contractual or other arrangements with buyers of recyclable materials;

(3) evaluate the amount of recyclable material recycled and modify the recycling program as necessary to ensure that all recyclable materials are effectively and practicably recycled; and

(4) establish educational and incentive programs to encourage maximum employee participation.

SECTION 1.93. Section 361.427(a), Health and Safety Code, is amended to read as follows:

(a) The commission, in consultation with the ~~comptroller [General Services Commission]~~, shall promulgate rules to establish guidelines which specify the percent of the total content of a product which must consist of recycled material for the product to be a "recycled product."

SECTION 1.94. Section 841.083(c-2), Health and Safety Code, is amended to read as follows:

(c-2) If the equipment necessary to implement the tracking service is available through a contract entered into by the ~~comptroller [Texas Building and Procurement Commission]~~, the Department of Public Safety or the council, as appropriate, shall acquire that equipment through that contract.

SECTION 1.95. Section 32.044(d), Human Resources Code, is amended to read as follows:

(d) The department with the assistance of the Health and Human Services Commission and the ~~comptroller [General Services Commission]~~ shall adopt rules under this section that allow the public or private hospital to make purchases through group purchasing programs except when the department has reason to believe that a better value is available through another procurement method.

SECTION 1.96. Section 111.0553(a), Human Resources Code, is amended to read as follows:

(a) The commission shall develop and, following review and approval by the board, implement agency-wide procurement procedures to:

- (1) ensure compliance with the best-value purchasing requirements of Section 2155.144(c), Government Code;
- (2) document that a best-value review of vendors has occurred;
- (3) document the reasons for selecting a vendor;
- (4) negotiate price discounts with high-volume vendors;
- (5) consolidate purchases with other agencies, including the Texas Department of Health and the comptroller [~~General Services Commission~~], to achieve best value; and
- (6) provide effective public notification to potential vendors of planned commission purchases.

SECTION 1.97. Chapter 122, Human Resources Code, is amended by adding Section 122.0011 to read as follows:

Sec. 122.0011. TRANSFER OF DUTIES; REFERENCE. (a) The powers and duties of the commission under this chapter are transferred to the comptroller.

(b) In this chapter, a reference to the commission means the comptroller.

SECTION 1.98. Article 21A.0135(a), Insurance Code, is amended to read as follows:

(a) The receiver shall use a competitive bidding process in the selection of any special deputies appointed under Section 21A.102 or 21A.154. The process must include procedures to promote the participation of historically underutilized businesses that have been certified by the comptroller [~~Texas Building and Procurement Commission~~] under Section 2161.061, Government Code.

SECTION 1.99. Sections 201.007(b), (c), (f), and (g), Local Government Code, are amended to read as follows:

(b) After the settlement of the outstanding indebtedness of an abolished municipality and the satisfaction of the other applicable requirements of Chapter 62, Local Government Code, the municipality's governing body at the time the municipality is abolished, or the receiver or trustees if appointed by a court, shall transfer the records of the municipality to the custody of the comptroller [~~General Services Commission~~]. A record of an abolished municipality may not be sold to satisfy an outstanding indebtedness.

(c) After the settlement of the outstanding indebtedness of an abolished special-purpose district or authority, other than a school district, and the satisfaction of the other applicable requirements of state law establishing or permitting the establishment of the district or authority or governing its abolition, the district's governing body at the time the district is abolished shall transfer the records of the district to the custody of the comptroller [~~General Services Commission~~]. A record of an abolished special-purpose district or authority may not be sold to satisfy an outstanding indebtedness.

(f) The cost of the transfer of records to the comptroller [~~General Services Commission~~] under this section shall be paid for out of the funds of the abolished local government. If funds of the local government are not available for this purpose, the cost of the transfer shall be paid out of the funds of the comptroller [~~General Services Commission~~].

(g) The records retention schedules issued by the commission shall be used, as far as practicable, as the basis for the retention and disposition of local government records transferred to the custody of the comptroller [~~General Services Commission~~] under this section.

SECTION 1.100. Section 252.0215, Local Government Code, is amended to read as follows:

Sec. 252.0215. COMPETITIVE BIDDING IN RELATION TO HISTORICALLY UNDERUTILIZED BUSINESS. A municipality, in making an expenditure of more than \$3,000 but less than \$25,000, shall contact at least two historically underutilized businesses on a rotating basis, based on information provided by the comptroller [~~General Services Commission~~] pursuant to Chapter 2161, Government Code. If the list fails to identify a historically underutilized business in the county in which the municipality is situated, the municipality is exempt from this section.

SECTION 1.101. The heading to Section 262.002, Local Government Code, is amended to read as follows:

Sec. 262.002. AUTHORITY TO PURCHASE ROAD EQUIPMENT AND TIRES THROUGH COMPTROLLER [~~STATE PURCHASING AND GENERAL SERVICES COMMISSION~~].

SECTION 1.102. Section 262.002(a), Local Government Code, is amended to read as follows:

(a) The commissioners court of a county may purchase through the comptroller [~~State Purchasing and General Services Commission~~] road machinery and equipment, tires, and tubes to be used by the county.

SECTION 1.103. Section 271.082, Local Government Code, is amended to read as follows:

Sec. 271.082. PURCHASING PROGRAM. (a) The comptroller [~~State Purchasing and General Services Commission~~] shall establish a program by which the comptroller [~~commission~~] performs purchasing services for local governments. The services must include:

(1) the extension of state contract prices to participating local governments when the comptroller [~~commission~~] considers it feasible;

(2) solicitation of bids on items desired by local governments if the solicitation is considered feasible by the comptroller [~~commission~~] and is desired by the local government; and

(3) provision of information and technical assistance to local governments about the purchasing program.

(b) The comptroller [~~commission~~] may charge a participating local government an amount not to exceed the actual costs incurred by the comptroller [~~commission~~] in providing purchasing services to the local government under the program.

(c) The comptroller [~~commission~~] may adopt rules and procedures necessary to administer the purchasing program. Before adopting a rule under this subsection, the comptroller must conduct a public hearing regarding the proposed rule regardless of whether the requirements of Section 2001.029(b), Government Code, are met.

SECTION 1.104. Section 113.283(a), Natural Resources Code, is amended to read as follows:

(a) The council is composed of the following individuals:

- (1) the commissioner of the General Land Office;
- (2) the members of the Railroad Commission of Texas;
- (3) the comptroller [~~chairman of the General Services Commission~~];

and

(4) the chairman of the Texas Natural Resource Conservation Commission.

SECTION 1.105. Section 161.020, Natural Resources Code, is amended to read as follows:

Sec. 161.020. PURCHASE OF SUPPLIES. The board may purchase at state expense through the comptroller [~~board of control~~] supplies, including stationery, stamps, printing, record books, and other things that may be needed to carry on the board's functions as a state agency in performing the duties imposed by this chapter.

SECTION 1.106. Section 12.008(c), Parks and Wildlife Code, is amended to read as follows:

(c) The comptroller [~~State Purchasing and General Services Commission~~] shall execute any sale of products under this section under the general law governing the sale of state property; however, the department shall determine the quantity of products to be offered for sale and the consideration in lieu of money to be received under the sale. The department may lease grazing or farming rights under this section. In leasing the rights, the department must follow a competitive bidding procedure.

SECTION 1.107. Section 81.404(b), Parks and Wildlife Code, is amended to read as follows:

(b) Contracts for the removal of fur-bearing animals and reptiles shall be entered into under the direction of the comptroller [~~State Purchasing and General Services Commission~~] in the manner provided by general law for the sale of state property, except that the department shall determine the means, methods, and quantities of fur-bearing animals and reptiles to be taken, and the department may accept or reject any bid received by the comptroller [~~State Purchasing and General Services Commission~~].

SECTION 1.108. Section 111.0035(f), Tax Code, is amended to read as follows:

(f) Except as provided by Subsection (g), the comptroller shall award a contract made under this section through a competitive bidding process that complies with Section 2155.132, Government Code~~[-, and the rules adopted by the General Services Commission relating to delegated purchases]~~. If the comptroller receives not more than three bids through the competitive bidding process, the comptroller shall report the number of bidders to the Legislative Budget Board before awarding the contract.

SECTION 1.109. Section 111.0036(f), Tax Code, is amended to read as follows:

(f) Except as provided by Subsection (g), the comptroller shall award a contract made under this section through a competitive bidding process that complies with Section 2155.132, Government Code~~[-, and the rules adopted by the General Services Commission relating to delegated purchases]~~. If the comptroller receives not more than three bids through the competitive bidding process, the comptroller shall report the number of bidders to the Legislative Budget Board before awarding the contract.

SECTION 1.110. Section 201.706, Transportation Code, is amended to read as follows:

Sec. 201.706. LOCAL GOVERNMENT ASSISTANCE. From appropriated funds, the department shall assist counties with materials to repair and maintain county roads. The department shall:

(1) provide that the total annual value of assistance under this section is:

(A) at least \$12 million per year for fiscal years 1998 and 1999;

and

(B) at least \$6 million per year for a fiscal year other than 1998 or

1999;

(2) make maximum usage of surplus materials on hand;

(3) develop rules and procedures to implement this section and to provide for the distribution of the assistance with preference given to counties with an above average number of overweight trucks receiving weight tolerance permits based on the previous year's permit totals; and

(4) undertake cooperative and joint procurement of road materials with counties under ~~[General Services Commission]~~ procedures of the comptroller.

SECTION 1.111. Section 202.082(b), Transportation Code, is amended to read as follows:

(b) Disposal of reclaimed asphalt pavement under this section is not subject to:

(1) Chapter 2175, Government Code; or

(2) the statutory or regulatory authority of the comptroller formerly exercised by the General Services Commission.

SECTION 1.112. Section 223.041(b), Transportation Code, is amended to read as follows:

(b) The department, in setting a minimum level of expenditures in these engineering-related activities that will be paid to the private sector providers, shall provide that the expenditure level for a state fiscal year in all strategies paid to private sector providers for all department engineering-related services for transportation projects is not less than 35 percent of the total funds appropriated in Strategy A.1.1. Plan/Design/Manage and Strategy A.1.2. of the General Appropriations Act for that state fiscal biennium. The department shall attempt to make expenditures for engineering-related services with private sector providers under this subsection with historically underutilized businesses, as defined by Section 2161.001, Government Code, in an amount consistent with the applicable

provisions of the Government Code, any applicable state disparity study, and in accordance with the good-faith-effort procedures outlined in the rules adopted by the comptroller [~~Texas Building and Procurement Commission~~].

SECTION 1.113. Section 502.052(c), Transportation Code, is amended to read as follows:

(c) To promote highway safety, each license plate shall be made with a reflectorized material that provides effective and dependable brightness for the period for which the plate is issued. The purchase of reflectorized material shall be submitted to the comptroller [~~General Services Commission~~] for approval.

SECTION 1.114. Section 502.053(b), Transportation Code, is amended to read as follows:

(b) When manufacturing is started, the Texas Department of Criminal Justice, the Texas Department of Transportation, and the comptroller [~~Texas Building and Procurement Commission~~], after negotiation, shall set the price to be paid for each license plate or insignia. The price must be determined from:

- (1) the cost of metal, paint, and other materials purchased;
- (2) the inmate maintenance cost per day;
- (3) overhead expenses;
- (4) miscellaneous charges; and
- (5) a previously approved amount of profit for the work.

SECTION 1.115. Section 14.058, Utilities Code, is amended to read as follows:

Sec. 14.058. FEES FOR ELECTRONIC ACCESS TO INFORMATION. The fees charged by the commission for electronic access to information that is stored in the system established by the commission using funds from the Texas Public Finance Authority and approved by the Department of Information Resources shall be established:

(1) by the commission in consultation with the comptroller [~~General Services Commission~~]; and

(2) in an amount reasonable and necessary to retire the debt to the Texas Public Finance Authority associated with establishing the electronic access system.

SECTION 1.116. Section 222.004(v), Water Code, is amended to read as follows:

(v) The authority may enter into contracts with this state through the comptroller [~~Texas Building and Procurement Commission~~] providing for direct sale by the authority of electrical power to this state for use in buildings or other facilities owned, leased, or rented by this state in Travis County.

SECTION 1.117. The following provisions of the Government Code are repealed:

- (1) Section 403.241(1);
- (2) Section 2103.063;
- (3) Section 2152.003;
- (4) Section 2152.104(c);
- (5) Sections 2155.323(c) and (d); and
- (6) Section 2161.002(b).

SECTION 1.118. Section 12.014(b), Agriculture Code, is repealed.

SECTION 1.119. On the effective date of this Act, the Texas Building and Procurement Commission is renamed the Texas Facilities Commission.

SECTION 1.120. (a) The Texas Facilities Commission retains the powers and duties of the former Texas Building and Procurement Commission that relate to charge and control of state buildings, grounds, or property, to maintenance or repair of state buildings, grounds, or property, to child care services for state employees under Chapter 663, Government Code, to surplus and salvage property, to construction of a state building, or to the purchase or lease of buildings, grounds, or property by or for the state.

(a-1) Except as otherwise provided by this Act or other law, all other powers and duties of the Texas Building and Procurement Commission are transferred to the comptroller.

(b) All employees of the Texas Building and Procurement Commission who primarily perform duties related to an activity described by Subsection (a) of this section, including employees who provide administrative support for those services, remain employees of the Texas Facilities Commission.

(b-1) All other employees of the Texas Building and Procurement Commission are transferred to the office of the comptroller. A management employee of the Texas Building and Procurement Commission who is transferred to the office of the comptroller under this subsection does not automatically continue to hold the person's management position. To hold the management position on other than an interim basis, the person must apply for the position with the comptroller.

(c) A rule, form, policy, procedure, or decision of the Texas Building and Procurement Commission that is related to an activity described by Subsection (a) of this section continues in effect as a rule, form, policy, procedure, or decision of the Texas Facilities Commission.

(c-1) A rule, form, policy, procedure, or decision of the Texas Building and Procurement Commission that is related to an activity transferred by this Act to the comptroller continues in effect as a rule, form, policy, procedure, or decision of the comptroller until superseded by an act of the comptroller.

(d) A court case, administrative proceeding, contract negotiation, or other proceeding involving the Texas Building and Procurement Commission that is related to an activity described by Subsection (a) of this section is unaffected by the change in name of the agency.

(d-1) A court case, administrative proceeding, contract negotiation, or other proceeding involving the Texas Building and Procurement Commission that is related to an activity transferred by this Act to the comptroller is transferred without change in status to the comptroller, and the comptroller assumes, without a change in status, the position of the Texas Building and Procurement Commission in a negotiation or proceeding relating to an activity transferred by this Act to the comptroller to which the Texas Building and Procurement Commission is a party.

(e) All money, contracts, leases, rights, bonds, and obligations of the Texas Building and Procurement Commission related to an activity described by Subsection (a) of this section remain with the Texas Facilities Commission.

(e-1) All money, contracts, memoranda of understanding, leases, rights, bonds, and obligations of the Texas Building and Procurement Commission related to an activity transferred by this Act to the comptroller are transferred to the comptroller.

(f) All personal property, including records, in the custody of the Texas Building and Procurement Commission related to an activity described by Subsection (a) of this section remains the property of the Texas Facilities Commission.

(f-1) All personal property, including records, in the custody of the Texas Building and Procurement Commission related to an activity transferred by this Act to the comptroller becomes the property of the comptroller.

(g) All funds appropriated by the legislature to the Texas Building and Procurement Commission for an activity described by Subsection (a) of this section, including funds for providing administrative support for those services, continue as appropriations to the Texas Facilities Commission.

(g-1) All funds appropriated by the legislature to the Texas Building and Procurement Commission for an activity transferred by this Act to the comptroller, including funds for providing administrative support for those services, are transferred to the comptroller.

SECTION 1.121. In accordance with Section 1.120 of this article, the comptroller and the Texas Facilities Commission shall adopt a memorandum of understanding that identifies and allocates between the office of the comptroller and the Texas Facilities Commission the powers, duties, property, employees, appropriations, and other items transferred under Section 1.120. The memorandum of understanding must also:

(1) identify and allocate between the office of the comptroller and the Texas Facilities Commission the employees and real and personal property of the Texas Building and Procurement Commission, including space in the central administrative offices of the commission, used to generally support the activities of the Texas Building and Procurement Commission; and

(2) provide a timetable for any necessary or advisable movement of the physical location of employees and property.

SECTION 1.122. Sections 2155.086 and 2155.087, Government Code, as added by this Act, apply only to a contract for which the solicitation of bids or proposals or similar expressions of interest is published on or after September 1, 2007. A contract for which the solicitation of bids or proposals or similar expressions of interest is published before September 1, 2007, is governed by the law in effect on the date the solicitation of bids or proposals or similar expressions of interest is published, and the former law is continued in effect for that purpose.

ARTICLE 2. DEPARTMENT OF INFORMATION RESOURCES

SECTION 2.01. Section 35.102(c), Business & Commerce Code, is amended to read as follows:

(c) This section does not apply to the Department of Information Resources [~~General Services Commission~~], in its capacity as the telecommunications provider for the state, and an institution of higher education, as that term is defined by Section 61.003, Education Code, that provides interactive computer service.

SECTION 2.02. Section 44.031(i), Education Code, is amended to read as follows:

(i) A school district may acquire computers and computer-related equipment, including computer software, through the Department of Information Resources [~~General Services Commission~~] under contracts entered into in accordance with Chapter 2054 or 2157, Government Code. Before issuing an invitation for bids, the department [~~commission~~] shall consult with the agency concerning the computer and computer-related equipment needs of school districts. To the extent possible the resulting contract shall provide for such needs.

SECTION 2.03. Section 2054.123(a), Government Code, is amended to read as follows:

(a) The department, in consultation with the [~~Texas Building and Procurement Commission, the~~] state auditor[;] and the comptroller, shall create an interagency panel of representatives appointed by those agencies and officers to coordinate and maintain a training program to assist state agencies in performing software audits, managing software, and purchasing software and software licenses. Each state agency shall cooperate with the panel in the evaluation of the agency's needs for software management and shall donate agency resources to the evaluation of the agency as the panel requires.

SECTION 2.04. Section 2054.201, Government Code, is amended to read as follows:

Sec. 2054.201. COMPOSITION; TERMS. (a) The telecommunications planning and oversight council is composed of:

(1) a representative of the comptroller's office, appointed by the comptroller;

(2) the executive director of the Telecommunications Infrastructure Fund Board;

(3) a representative of the department [~~Texas Building and Procurement Commission~~], appointed by the executive director of the department [~~commission~~];

(4) a member representing the interests of state agencies with 1,000 employees or more, appointed by the lieutenant governor;

(5) a member representing the interests of state agencies with fewer than 1,000 employees, appointed by the speaker of the house of representatives;

(6) a member representing the interests of institutions of higher education, appointed by the commissioner of higher education;

(7) a member representing the interests of The University of Texas System, appointed by the chancellor;

(8) a member representing the interests of The Texas A&M University System, appointed by the chancellor;

(9) a member representing the interests of public school districts that are customers of the consolidated telecommunications system, appointed by the governor;

(10) a member representing the interests of local governments that are customers of the consolidated telecommunications system, appointed by the governor;

(11) two public members with telecommunications expertise, appointed by the governor; and

(12) a representative of the Health and Human Services Commission, appointed by the commissioner of health and human services.

(b) Appointed members of the telecommunications planning and oversight council serve staggered two-year terms, with the terms of four or five members expiring August 31 each year, except that:

(1) the representative of the comptroller's office serves at the discretion of the comptroller;

(2) the representative of the department [~~Texas Building and Procurement Commission~~] serves at the discretion of the executive director of the department [~~commission~~]; and

(3) the representative of the Health and Human Services Commission serves at the discretion of the commissioner of health and human services.

SECTION 2.05. Sections 2054.304(b) and (c), Government Code, are amended to read as follows:

(b) Except as provided by Subsection (c), the state agency must file the project plan with the quality assurance team and the department [~~Texas Building and Procurement Commission~~] before the agency:

(1) spends more than 10 percent of allocated funds for the project; or

(2) first issues a vendor solicitation for the project.

(c) Unless the project plan has been filed under this section:

(1) [~~the Texas Building and Procurement Commission may not issue~~] a vendor solicitation may not be issued for the project; and

(2) the agency may not post a vendor solicitation for the project in the state business daily under Section 2155.083.

SECTION 2.06. Section 771.031(b), Health and Safety Code, is amended to read as follows:

(b) The following individuals serve as nonvoting ex officio members:

(1) the executive director of the Public Utility Commission of Texas, or an individual designated by the executive director;

(2) the executive director of the Department of Information Resources [~~General Services Commission~~], or an individual designated by the executive director; and

(3) the commissioner of public health, or an individual who has responsibility for the poison control network designated by the commissioner.

SECTION 2.07. Section 771.0711(e), Health and Safety Code, is amended to read as follows:

(e) A member of the commission, the governing body of a public agency, or the Department of Information Resources [~~General Services Commission~~] is not liable for any claim, damage, or loss arising from the provision of wireless 9-1-1 service unless the act or omission causing the claim, damage, or loss violates a statute or ordinance applicable to the action.

SECTION 2.08. Section 55.203(f), Utilities Code, is amended to read as follows:

(f) The Department of Information Resources [~~General Services Commission~~] shall cooperate with the commission and with publishers to ensure that the subject matter listing of programs and telephone numbers in the telephone directories are consistent with the categorization developed by the Records Management Interagency Coordinating Council under Section 441.203(j), Government Code.

ARTICLE 3. CONFORMING AMENDMENTS; MISCELLANEOUS

SECTION 3.01. Section 201.002(b), Transportation Code, is amended to read as follows:

(b) The comptroller [~~General Services Commission~~] shall contract for equipment and supplies, including seals and number plates, required by law in the administration of the registration of vehicles and in the operation of the department.

SECTION 3.02. Section 403.023(b), Government Code, is amended to read as follows:

(b) The comptroller may adopt rules relating to the use of credit or charge cards by state agencies to pay for purchases. The rules may:

(1) authorize a state agency to use credit or charge cards if the comptroller determines the best interests of the state would be promoted;

(2) authorize a state agency to use credit or charge cards to pay for purchases without providing the same authorization to other state agencies; and

(3) authorize a state agency to use credit or charge cards to pay for purchases that otherwise may be paid out of the agency's petty cash accounts under Subchapter K; ~~and~~

~~[(4) authorize the General Services Commission to contract with one or more credit or charge card issuers on behalf of state agencies].~~

SECTION 3.03. Subchapter B, Chapter 403, Government Code, is amended by adding Section 403.0305 to read as follows:

Sec. 403.0305. APPROVAL BY COMPTROLLER. A public agency as defined under Section 30.003(3), Water Code, may not enter into a contract as provided by Subchapter C, Chapter 2254, without review and approval by the comptroller.

SECTION 3.04. Section 441.203(a), Government Code, is amended to read as follows:

(a) The Records Management Interagency Coordinating Council is composed of:

(1) permanent members, consisting of the following officers or the officer's designee:

(A) the secretary of state;

(B) the state auditor, who serves as a nonvoting member;
 (C) the comptroller of public accounts;
 (D) the attorney general;
 (E) the director and librarian; and
 (F) ~~the executive director of the Texas Building and Procurement Commission; and~~
 [(G)] the executive director of the Department of Information Resources; and

(2) auxiliary voting members, consisting of:

(A) one faculty member of a public senior college or university, as defined by Section 61.003, Education Code, who has demonstrated knowledge of records and information management; and

(B) two individuals who serve as information resources managers, under Section 2054.071, for state agencies in the executive branch of government.

SECTION 3.05. Section 551.0726(a), Government Code, is amended to read as follows:

(a) The Texas Facilities ~~[Building and Procurement]~~ Commission may conduct a closed meeting to deliberate business and financial issues relating to a contract being negotiated if, before conducting the closed meeting:

(1) the commission votes unanimously that deliberation in an open meeting would have a detrimental effect on the position of the state in negotiations with a third person; and

(2) the attorney advising the commission issues a written determination finding that deliberation in an open meeting would have a detrimental effect on the position of the state in negotiations with a third person and setting forth that finding therein.

SECTION 3.06. Section 552.009(a), Government Code, as amended by Chapters 329 and 716, Acts of the 79th Legislature, Regular Session, 2005, is reenacted to read as follows:

(a) The open records steering committee is composed of two representatives of the attorney general's office and:

(1) a representative of each of the following, appointed by its governing entity:

- (A) the comptroller's office;
- (B) the Department of Public Safety;
- (C) the Department of Information Resources; and
- (D) the Texas State Library and Archives Commission;

(2) five public members, appointed by the attorney general; and

(3) a representative of each of the following types of local governments, appointed by the attorney general:

- (A) a municipality;
- (B) a county; and
- (C) a school district.

SECTION 3.07. Section 571.061(a), Government Code, is amended to read as follows:

(a) The commission shall administer and enforce:

- (1) Chapters 302, 303, 305, 572, and 2004;
- (2) Subchapter C, Chapter 159, Local Government Code, in connection with a county judicial officer, as defined by Section 159.051, Local Government Code, who elects to file a financial statement with the commission; ~~[and]~~
- (3) Title 15, Election Code; and
- (4) Sections 2152.064 and 2155.003.

SECTION 3.08. Section 571.091(a), Government Code, is amended to read as follows:

(a) The commission shall prepare a written opinion answering the request of a person subject to any of the following laws for an opinion about the application of any of these laws to the person in regard to a specified existing or hypothetical factual situation:

- (1) Chapter 302;
- (2) Chapter 303;
- (3) Chapter 305;
- (4) Chapter 2004;
- (5) Chapter 572;
- (6) Subchapter C, Chapter 159, Local Government Code, as provided by Section 571.061(a)(2);
- (7) Title 15, Election Code;
- (8) Chapter 36, Penal Code; ~~[or]~~
- (9) Chapter 39, Penal Code;
- (10) Section 2152.064; or
- (11) Section 2155.003.

SECTION 3.09. Section 572.003(c), Government Code, is amended to read as follows:

(c) The term means a member of:

- (1) the Public Utility Commission of Texas;
- (2) the Texas Department of Economic Development;
- (3) the Texas Commission on Environmental Quality;
- (4) the Texas Alcoholic Beverage Commission;
- (5) The Finance Commission of Texas;
- (6) the Texas Facilities ~~[Building and Procurement]~~ Commission;
- (7) the Texas Board of Criminal Justice;
- (8) the board of trustees of the Employees Retirement System of Texas;
- (9) the Texas Transportation Commission;
- (10) the Texas Workers' Compensation Commission;
- (11) the Texas Department of Insurance;
- (12) the Parks and Wildlife Commission;
- (13) the Public Safety Commission;
- (14) the Texas Ethics Commission;
- (15) the State Securities Board;
- (16) the Texas Water Development Board;

(17) the governing board of a public senior college or university as defined by Section 61.003, Education Code, or of The University of Texas Southwestern Medical Center at Dallas, The University of Texas Medical Branch at Galveston, The University of Texas Health Science Center at Houston, The University of Texas Health Science Center at San Antonio, The University of Texas System Cancer Center, The University of Texas Health Science Center at Tyler, University of North Texas Health Science Center at Fort Worth, Texas Tech University Health Sciences Center, Texas State Technical College–Harlingen, Texas State Technical College–Marshall, Texas State Technical College–Sweetwater, or Texas State Technical College–Waco;

(18) the Texas Higher Education Coordinating Board;

(19) the Texas Workforce Commission;

(20) the State Banking Board;

(21) the board of trustees of the Teacher Retirement System of Texas;

(22) the Credit Union Commission;

(23) the School Land Board;

(24) the board of the Texas Department of Housing and Community Affairs;

(25) the Texas Racing Commission;

(26) the State Board of Dental Examiners;

(27) the Texas State Board of Medical Examiners;

(28) the Board of Pardons and Paroles;

(29) the Texas State Board of Pharmacy;

(30) the Department of Information Resources governing board;

(31) the Motor Vehicle Board;

(32) the Texas Real Estate Commission;

(33) the board of directors of the State Bar of Texas;

(34) the bond review board;

(35) the Texas Board of Health;

(36) the Texas Board of Mental Health and Mental Retardation;

(37) the Texas Board on Aging;

(38) the Texas Board of Human Services;

(39) the Texas Funeral Service Commission;

(40) the board of directors of a river authority created under the Texas Constitution or a statute of this state; or

(41) the Texas Lottery Commission.

SECTION 3.10. Subchapter B, Chapter 2152, Government Code, is amended by adding Section 2152.064 to read as follows:

Sec. 2152.064. CONFLICTS OF INTEREST IN CERTAIN TRANSACTIONS. (a) A commission member, employee, or appointee may not:

(1) have an interest in, or in any manner be connected with:

(A) a contract or bid for a purchase of goods or services, including professional or consulting services, by the commission or another agency of the state in connection with the commission's duties concerning:

(i) charge and control of state buildings, grounds, or property;

(ii) maintenance or repair of state buildings, grounds, or property;

(iii) construction of a state building; or

(iv) purchase or lease of state buildings, grounds, or property by or for the state; or

(B) a recipient of state surplus or salvage property under the control of the commission; or

(2) in any manner, including by rebate or gift, accept or receive, directly or indirectly, from a recipient of state surplus or salvage property or a person to whom a contract described by Subdivision (1) may be awarded, anything of value or a promise, obligation, or contract for future reward or compensation.

(b) A commission member, employee, or appointee who violates Subsection (a)(2) is subject to dismissal.

(c) In consultation with the commission, the Texas Ethics Commission shall adopt rules to implement this section.

(d) The Texas Ethics Commission shall administer and enforce this section and may prepare written opinions regarding this section in accordance with Subchapter D, Chapter 571.

SECTION 3.11. Sections 2155.444(a), (c), and (e), Government Code, are amended to read as follows:

(a) The commission and all state agencies making purchases of goods, including agricultural products, shall give preference to those produced or grown in this state or offered by Texas bidders as follows:

(1) goods produced or offered by a Texas bidder that is owned by a service-disabled veteran who is a Texas resident shall be given a first preference and goods produced in this state or offered by other Texas bidders shall ~~equally~~ be given second preference, if the cost to the state and quality are equal; and

(2) agricultural products grown in this state shall be given first preference and agricultural products offered by Texas bidders shall be given second preference, if the cost to the state and quality are equal.

(c) In this section:

(1) "Agricultural products" includes textiles and other similar products.

(1-a) "Service-disabled veteran" means a person who is a veteran as defined by 38 U.S.C. Section 101(2) and who has a service-connected disability as defined by 38 U.S.C. Section 101(16).

(2) "Texas bidder" means a business:

(A) incorporated in this state;

(B) that has its principal place of business in this state; or

(C) that has an established physical presence in this state.

(e) The commission and all state agencies procuring services shall give first preference to services offered by a Texas bidder that is owned by a service-disabled veteran who is a Texas resident and shall give second preference to services offered by other Texas bidders if:

(1) the services meet state requirements regarding the service to be performed and expected quality; and

(2) the cost of the service does not exceed the cost of other similar services of similar expected quality that are ~~not~~ offered by a ~~Texas~~ bidder that is not entitled to a preference under this subsection.

SECTION 3.12. Subchapter H, Chapter 2155, Government Code, is amended by adding Section 2155.452 to read as follows:

Sec. 2155.452. PREFERENCE FOR CONTRACTORS PROVIDING FOODS OF HIGHER NUTRITIONAL VALUE. (a) The commission and state agencies making purchases of food for consumption in a public cafeteria may give preference to contractors who provide foods of higher nutritional value and who do not provide foods containing trans fatty acids for consumption in the cafeteria.

(b) In complying with this section, the commission and state agencies shall review the Department of Agriculture's nutrition standards.

SECTION 3.13. Section 2203.001(b), Government Code, is amended to read as follows:

(b) The report must be made daily on a form prescribed by the comptroller ~~[General Services Commission].~~

SECTION 3.14. Section 2254.024(b), Government Code, is amended to read as follows:

(b) If the governor and [s] comptroller ~~[-and General Services Commission]~~ consider it more advantageous to the state to procure a particular consulting service under the procedures of Chapters 2155-2158, instead of under this subchapter, they may make a memorandum of understanding to that effect and each adopt the memorandum by rule. Procurement of a consulting service described in a memorandum of understanding under this subsection is subject only to Chapters 2155-2158.

SECTION 3.15. Section 2254.039(b), Government Code, is amended to read as follows:

(b) The comptroller shall give proposed rules to the governor ~~[and the General Services Commission]~~ for review and comment before adopting the rules.

ARTICLE 4. STUDY OF TEXAS FACILITIES COMMISSION FUNCTIONS

SECTION 4.01. Subchapter A, Chapter 2152, Government Code, is amended by adding Section 2152.004 to read as follows:

Sec. 2152.004. STUDY TO ASSESS FUNCTIONS OF TEXAS FACILITIES COMMISSION. (a) The Sunset Advisory Commission shall conduct a study of the functions of the Texas Facilities Commission. The study must assess the best allocation of state resources for:

(1) the acquisition of state buildings through lease or purchase;
(2) the construction of buildings owned by the state;
(3) the control and maintenance of buildings owned or leased by the state; and

(4) all other related responsibilities performed by the commission.

(b) The study must consider the benefits to the state of outsourcing any of the commission's functions to private entities or of allocating those functions to other state agencies.

(c) The commission shall take into consideration the findings and conclusions of the study in its report to the 81st Legislature and shall include any recommendations it considers appropriate resulting from its consideration of the study.

(d) The Texas Facilities Commission, the General Land Office, and the state auditor shall provide support to the Sunset Advisory Commission in conducting the study.

(e) This section expires January 1, 2009.

ARTICLE 5. EFFECTIVE DATE

SECTION 5.01. This Act takes effect September 1, 2007.

Representative Swinford moved to adopt the conference committee report on **HB 3560**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 3560** prevailed by (Record 1987): 141 Yeas, 2 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; 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.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; 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; Strama; Straus; Swinford; Talton; Taylor; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

Nays — Davis, Y.; Heflin.

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

Absent — Burnam; Giddings; Hamilton; Hill; Thompson.

HB 3581 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative C. Howard submitted the following conference committee report on **HB 3581**:

Austin, Texas, May 26, 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 3581** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Wentworth
Nichols
Patrick
Carona

C. Howard
Bonnen
Talton

On the part of the senate

On the part of the house

HB 3581, A bill to entitled An Act relating to county authority to abate nuisances.

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

SECTION 1. Section 343.002(1), Health and Safety Code, is amended to read as follows:

(1) "Abate" means to eliminate or remedy:

(A) by removal, repair, rehabilitation, or demolition;

(B) in the case of a nuisance under Section 343.011(c)(1), (8), or (9), by prohibition or control of access; and

(C) in the case of a nuisance under Section 343.011(c)(11), by removal, remediation, storage, transportation, disposal, or other means of waste management authorized by Chapter 361.

SECTION 2. Sections 343.011(c) and (d), Health and Safety Code, are amended to read as follows:

(c) A public nuisance is:

(1) keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;

(2) keeping, storing, or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of a public street for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street;

(3) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests;

(4) allowing weeds to grow on premises in a neighborhood if the weeds are located within 300 feet of another residence or commercial establishment;

(5) maintaining a building in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, disaster, damage, or abandonment or because it constitutes a fire hazard;

(6) maintaining on abandoned and unoccupied property in a neighborhood, or maintaining on any property in a neighborhood in a county with a population of more than 1.1 million, a swimming pool that is not protected with:

(A) a fence that is at least four feet high and that has a latched gate that cannot be opened by a child; or

(B) a cover over the entire swimming pool that cannot be removed by a child;

(7) maintaining a flea market in a manner that constitutes a fire hazard;

(8) discarding refuse or creating a hazardous visual obstruction on:

(A) county-owned land; or

(B) land or easements owned or held by a special district that has the commissioners court of the county as its governing body;

(9) discarding refuse on the smaller of:

(A) the area that spans 20 feet on each side of a utility line; or

(B) the actual span of the utility easement; ~~or~~

(10) filling or blocking a drainage easement, failing to maintain a drainage easement, maintaining a drainage easement in a manner that allows the easement to be clogged with debris, sediment, or vegetation, or violating an agreement with the county to improve or maintain a drainage easement; or

(11) discarding refuse on property that is not authorized for that activity.

(d) This section does not apply to:

(1) a site or facility that is:

(A) permitted and regulated by a state agency for the activity described by Subsection (c); or

(B) licensed or permitted under Chapter 361 for the activity described by Subsection (c); or

(2) agricultural land.

SECTION 3. Section 343.013(a), Health and Safety Code, is amended to read as follows:

(a) A county or district court may by injunction prevent, ~~or~~ restrain, abate, or otherwise remedy a violation of this chapter in the unincorporated area of the county.

SECTION 4. Section 343.021, Health and Safety Code, is amended to read as follows:

Sec. 343.021. AUTHORITY TO ABATE NUISANCE. If a county adopts abatement procedures that are consistent with the general purpose of and conform to this chapter, the [A] county may abate a nuisance under this chapter:

(1) by demolition or removal;

(2) ~~or~~ in the case of a nuisance under Section 343.011(c)(1), (8), or (9), by prohibition or control of access to the premises; and

(3) in the case of a nuisance under Section 343.011(c)(11), by removal, remediation, storage, transportation, disposal, or other means of waste management authorized under Chapter 361 ~~[if the county adopts abatement procedures that are consistent with the general purpose of this chapter and that conform to this chapter].~~

SECTION 5. Section 343.022(a), Health and Safety Code, is amended to read as follows:

(a) The abatement procedures adopted by the commissioners court must be administered by a regularly salaried, full-time county employee. A person authorized by the person administering the abatement program may administer:

(1) ~~[-, but]~~ the prohibition or control of access to the premises to prevent a violation of Section 343.011(c)(1), (8), or (9);

(2) ~~[-, or]~~ the removal or demolition of the nuisance; and

(3) the abatement of a nuisance described by Section 343.011(c)(11) ~~[-; may be made by a person authorized by the person administering the abatement program].~~

SECTION 6. Section 343.023(a), Health and Safety Code, is amended to read as follows:

(a) A county may:

(1) assess:

(A) the cost of abating the nuisance, including management, remediation, storage, transportation, and disposal costs, and damages and other expenses incurred by the county;

(B) the cost of legal notification by publication; ~~[-]~~ and

(C) an administrative fee of not more than \$100 on the person receiving notice under Section 343.022; or

(2) by resolution or order, assess:

(A) the cost of abating the nuisance;

(B) ~~[-]~~ the cost of legal notification by publication; ~~[-]~~ and

(C) an administrative fee of not more than \$100 against the property on which the nuisance exists.

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 C. Howard moved to adopt the conference committee report on **HB 3581**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 3581** prevailed by (Record 1988): 141 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycok; Bailey; 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; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Gonzales; Gonzalez Tourelles; Goolsby; Guillen; Haggerty; Hancock; Hardcastle; Harless; 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; 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; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent — Burnam; Flores; Giddings; Hamilton; Hill; Latham; Thompson.

SB 1908 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Menendez submitted the conference committee report on **SB 1908**.

SB 1908 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE SWINFORD: Representative Menendez, I note that the conference committee report does not include language added by the house that clarifies existing law regarding qualifications for ad valorem tax exemption for affordable housing. What was your intent, or the intent of the senate conferees, in not including that language in the conference committee report?

REPRESENTATIVE MENENDEZ: It was the opinion of both the house and senate conferees that the language was redundant to existing law and was unnecessary.

SWINFORD: Could you explain why the changes made to the Tax Code by **SB 1908**, specifically the sections regarding Section 11.182, Tax Code, were unnecessary to achieve the intent of the house in including that language?

MENENDEZ: The changes made by **SB 1908** to Section 11.182, Tax Code, are meant to clarify an apparent conflict between the holdings of the Waco Court of Appeals and the Houston Court of Appeals in regard to the taxable status of affordable properties owned by nonprofit entities. Since the supreme court has not resolved the conflict, the house sought to clarify existing law through this amendment. It was the conferees' opinion that the house amendment would merely restate the legislature's intent in adopting this language during the 78th Legislature, Regular Session. This amendment would have moved language that requires that a nonprofit own 100 percent of the general partner interest of an affordable property from a section relating to "additional requirements for an exemption" to the section relating to whether the CHDO would be initially entitled to the exemption. In current law, 11.182(b), in isolation, seems to state that a CHDO has to have title to the property in its name. However, 11.182(e) states that the CHDO can receive the exemption if it owns 100 percent of the general partner of a limited partnership that has title to the property. To interpret 11.182(b) to require that a CHDO have title in the name of the CHDO would render 11.182(e) meaningless. Every word of a statute is intended to have effect, so the only logical conclusion is that, if these two sections are read together, a CHDO exemption would be available to limited partnerships that have CHDOs as 100 percent general partner interest holders. The interpretation of the conferees is consistent with the holding of the 1st Court of Appeals in *TRQ Captain's*

Landing v. Galveston CAD, and therefore it is our intent in not including this language to reconfirm the legislature's original intent in passing this legislation in the 78th Legislature that limited partnerships with CHDO 100 percent general partners qualify for the exemption in 11.182, Tax Code.

REMARKS ORDERED PRINTED

Representative Swinford moved to print remarks between Representative Menendez and Representative Swinford.

The motion prevailed.

REPRESENTATIVE R. COOK: Representative Menendez, I realize that the language eliminating a scoring penalty against affordable housing tax credits applications was not included in the final conference committee report. I would like to know if you are aware of the intention of the legislature in the 78th session regarding neighborhood group input on these housing projects?

MENENDEZ: Absolutely. Representative Cook, in the 78th Legislature, one of the things we were concerned with was that neighborhood associations in suburban and urban communities had no input when these tax credit applications were coming into their community and therefore the legislature asked to give them points in the scoring as to whether or not they supported a tax credit development coming into their community. That was what the intention was at that time.

R. COOK: Was it the intention of the legislature in 2003 to penalize an application which was proposed for an area in which there was no recognized neighborhood group or association?

MENENDEZ: Absolutely not, and in fact, I'm glad you brought that up. Unfortunately, last year, the Hidalgo County Housing Authority had a wonderful application that came within one point of scoring in order to qualify, but because it was in a rural part of the county, it did not receive the points because there was no neighborhood association in that part.

R. COOK: Was it your intention to make it clear that it was not intended to penalize an application just because there was no neighborhood group in the area of the project?

MENENDEZ: Absolutely not.

REMARKS ORDERED PRINTED

Representative R. Cook moved to print remarks between Representative Menendez and Representative R. Cook.

The motion prevailed.

Representative Menendez moved to adopt the conference committee report on **SB 1908**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 1908** prevailed by (Record 1989): 113 Yeas, 26 Nays, 3 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Bailey; Berman; Bohac; Bolton; Branch; Burnam; Castro; Chavez; Chisum; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Darby; Davis, Y.; Delisi; Driver; Dunnam; Dutton; Eiland; Eissler; England; Escobar; Farabee; Farias; Farrar; Flores; Frost; Gallego; Garcia; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, D.; Hughes; Isett; Jackson; Keffer; King, S.; King, T.; Kolkhorst; Krusee; Kuempel; Leibowitz; Lucio; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; Oliveira; Olivo; Orr; Ortiz; Otto; Patrick; Pickett; Pitts; Puente; Raymond; Ritter; Rodriguez; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Thompson; Truitt; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

Nays — Aycock; Bonnen; Brown, B.; Brown, F.; Callegari; Christian; Crabb; Creighton; Crownover; Davis, J.; Elkins; Flynn; Gattis; Geren; Harper-Brown; King, P.; Latham; Laubenberg; Macias; O'Day; Parker; Paxton; Phillips; Riddle; Taylor; Van Arsdale.

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

Absent — Deshotel; Dukes; Howard, C.; Jones; Miller; Peña; Quintanilla; Rose.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 1989. I intended to vote no.

Anderson

I was shown voting yes on Record No. 1989. I intended to vote no.

Berman

I was shown voting yes on Record No. 1989. I intended to vote no.

Branch

I was shown voting yes on Record No. 1989. I intended to vote no.

Delisi

I was shown voting yes on Record No. 1989. I intended to vote no.

Zedler

SB 1908 - STATEMENT BY REPRESENTATIVE RIDDLE

I want to point out that a statement by Representative Menendez that was read and printed in the house record regarding the conference committee's intent on **SB 1908**, in removing the house floor amendment by Representative Swinford, is misleading and inaccurate.

Conferees on **SB 1908** did not remove the amendment because it was redundant of existing law. They removed it because it changed existing law. It would have allowed private developers to reap 100 percent of an exemption

intended for charitable organizations that develop low income housing, and it would have shifted more taxes onto the backs of homeowners and businesses. On the evening of May 27, Representative Menendez and Representative Keffer visited the office of Senator Patrick to assure him that this amendment would be removed, due to the change it would make in current law and the concerns of other senators and the fact that this had not been properly vetted in either chamber.

Under current law these developers can still get a 50 percent exemption if they meet stringent standards for operations and spending to ensure that the exemption ultimately benefits the taxpayers. The amendment would have increased the exemption and watered down the standards that are in current law.

HB 568 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Puente submitted the following conference committee report on **HB 568**:

Austin, Texas, May 26, 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 568** 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	Puente
Brimer	Geren
Carona	Parker
Watson	Turner
Wentworth	
On the part of the senate	On the part of the house

HB 568, A bill to be entitled An Act relating to the requirements for an affidavit of voluntary relinquishment of parental rights and to the inheritance rights of certain parents.

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

SECTION 1. Section 161.103(b), Family Code, is amended to read as follows:

(b) The affidavit must contain:

- (1) the name, county of residence [~~address~~], and age of the parent whose parental rights are being relinquished;
- (2) the name, age, and birth date of the child;
- (3) the names and addresses of the guardians of the person and estate of the child, if any;
- (4) a statement that the affiant is or is not presently obligated by court order to make payments for the support of the child;

(5) a full description and statement of value of all property owned or possessed by the child;

(6) an allegation that termination of the parent-child relationship is in the best interest of the child;

(7) one of the following, as applicable:

(A) the name and county of residence ~~[address]~~ of the other parent;

(B) a statement that the parental rights of the other parent have been terminated by death or court order; or

(C) a statement that the child has no presumed father and that an affidavit of status of the child has been executed as provided by this chapter;

(8) a statement that the parent has been informed of parental rights and duties;

(9) a statement that the relinquishment is revocable, that the relinquishment is irrevocable, or that the relinquishment is irrevocable for a stated period of time;

(10) if the relinquishment is revocable, a statement in boldfaced type concerning the right of the parent signing the affidavit to revoke the relinquishment only if the revocation is made before the 11th day after the date the affidavit is executed;

(11) if the relinquishment is revocable, the name and address of a person to whom the revocation is to be delivered; and

(12) the designation of a prospective adoptive parent, the Department of Family and Protective ~~[and Regulatory]~~ Services, if the department has consented in writing to the designation, or a licensed child-placing agency to serve as managing conservator of the child and the address of the person or agency.

SECTION 2. Section 41, Texas Probate Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) Parent-Child Relationship. A probate court may declare that the parent of a child under 18 years of age may not inherit from or through the child under the laws of descent and distribution if the court finds by clear and convincing evidence that the parent has:

(1) voluntarily abandoned and failed to support the child in accordance with the parent's obligation or ability for at least three years before the date of the child's death, and did not resume support for the child before that date;

(2) voluntarily and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from and failed to support the child since birth; or

(3) been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code or adjudicated under Title 3, Family Code, for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following sections of the Penal Code:

- (A) Section 19.02 (murder);
- (B) Section 19.03 (capital murder);
- (C) Section 19.04 (manslaughter);
- (D) Section 21.11 (indecenty with a child);
- (E) Section 22.01 (assault);
- (F) Section 22.011 (sexual assault);
- (G) Section 22.02 (aggravated assault);
- (H) Section 22.021 (aggravated sexual assault);
- (I) Section 22.04 (injury to a child, elderly individual, or disabled

individual);

- (J) Section 22.041 (abandoning or endangering child);
- (K) Section 25.02 (prohibited sexual conduct);
- (L) Section 43.25 (sexual performance by a child); or
- (M) Section 43.26 (possession or promotion of child pornography).

(f) Treatment of Certain Relationships. On a determination that the parent of a child may not inherit from or through the child under Subsection (e) of this section, the parent shall be treated as if the parent predeceased the child for purposes of:

- (1) inheritance under the laws of descent and distribution; and
- (2) any other cause of action based on parentage.

SECTION 3. The change in law made by this Act applies only to an affidavit of voluntary relinquishment of parental rights executed on or after the effective date of this Act. An affidavit executed before the effective date of this Act is governed by the law in effect on the date the affidavit was executed, and the former law is continued in effect for that purpose.

SECTION 4. Notwithstanding Section 3 of this Act, the changes in law made by this Act to Section 41, Texas Probate Code, apply only to the estate of a person who dies on or after the effective date of this Act. An estate of a person who dies before the effective date of this Act is covered by the law in effect on the date of the person's death, and the former law is continued in effect for that purpose.

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

Representative Puente moved to adopt the conference committee report on **HB 568**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 568** prevailed by (Record 1990): 140 Yeas, 1 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; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; 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; 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; 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.

Nays — Hartnett.

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

Absent — Deshotel; Farrar; Howard, C.; Latham; Peña; Phillips; Smith, W.

HB 2667 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Latham submitted the following conference committee report on **HB 2667**:

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 2667** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Deuell	Latham
Lucio	Driver
Van de Putte	Paxton
Hinojosa	Gattis
On the part of the senate	On the part of the house

HB 2667, A bill to be entitled An Act relating to certain insurance-related matters involving rural volunteer firefighters, volunteer police force members, or emergency services districts.

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

SECTION 1. Section 614.072(b), Government Code, is amended to read as follows:

(b) The director may adopt rules necessary to assist rural volunteer fire departments in the payment of:

- (1) workers' compensation insurance;
- (2) audit costs for workers' compensation claims in any year in which there is an abnormally high number of wildfires; and
- (3) accidental death and disability insurance.

SECTION 2. Chapter 614, Government Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. INSURANCE COVERAGE REQUIRED FOR
VOLUNTEER POLICE FORCE MEMBERS

Sec. 614.121. DEFINITION. In this subchapter, "volunteer police force member" means:

(1) a person summoned under Section 341.011, Local Government Code, to serve on a special police force;

(2) a police reserve force member appointed under Section 341.012, Local Government Code; and

(3) any other person assigned by a state agency or political subdivision to perform, without compensation, any duties typically performed by a peace officer.

Sec. 614.122. INSURANCE COVERAGE REQUIRED. (a) Each volunteer police force member must be insured or covered by the applicable state agency or political subdivision against any injury suffered by the police force member in the course and scope of performing the person's assigned duties at the request of or under a contract with a state agency or political subdivision.

(b) The applicable state agency or political subdivision may satisfy the requirements of Subsection (a) by:

(1) providing insurance coverage; or

(2) entering into an interlocal agreement with another political subdivision providing for self-insurance.

SECTION 3. Section 775.084(i), Health and Safety Code, is amended to read as follows:

(i) This section does not apply to:

(1) the purchase or lease of real property;

(2) an item or service that the board determines can be obtained from only one source;

(3) a contract for fire extinguishment and suppression services, emergency rescue services, or ambulance services;

(4) an emergency expenditure;

(5) the purchase of vehicle fuel; ~~or~~

(6) the purchase of firefighter bunker gear;

(7) the purchase of insurance coverage; or

(8) repairs funded by a payment made under an insurance claim.

SECTION 4. Subchapter H, Chapter 614, Government Code, as added by this Act, applies only to a volunteer police force member performing assigned duties on or after January 1, 2008.

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

Representative Latham moved to adopt the conference committee report on **HB 2667**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 2667** prevailed by (Record 1991): 139 Yeas, 1 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; 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; Davis, J.; Davis, Y.; Delisi; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; 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; Merritt; Miles; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Phillips; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

Nays — Aycock.

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

Absent — Darby; Deshotel; Farrar; Howard, C.; Miller; Peña; Smith, W.; Van Arsdale.

STATEMENT OF VOTE

I was shown voting yes on Record No. 1991. I intended to vote no.

Kolkhorst

HR 2913 - ADOPTED (by Talton)

The following privileged resolution was laid before the house:

HR 2913

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 3609** (membership and service credit in the Employees Retirement System of Texas for certain employees) 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 text to Section 2 of the bill by adding new Subsection (b) to read as follows:

(b) A member of the Employees Retirement System of Texas who is an appointed or elected officer of the 80th House of Representatives, as determined by the House Journal, and who has also served on the staff of a state judicial agency, and who has at least 15 years of service credit in the retirement system,

may transfer the person's service credit to the elected class. A person who makes a transfer under this provision may continue to transfer the credit between classes before or after retirement.

Explanation: This change is necessary to ensure certain individuals employed by the house of representatives during the 80th Legislature may transfer the person's service credit in the Employees Retirement System of Texas to the elected class.

HR 2913 was adopted.

(Eissler in the chair)

HB 3609 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Talton submitted the following conference committee report on **HB 3609**:

Austin, Texas, May 26, 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 3609** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Ellis
Brimer
Whitmire
Harris

Talton
J. Davis
Geren
Hodge
Pitts

On the part of the senate

On the part of the house

HB 3609, A bill to be entitled An Act relating to membership and service credit in the Employees Retirement System of Texas for certain employees.

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

SECTION 1. Section 812.201, Government Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(A) Except as provided by Subsection (c) or (d), a retiree may not rejoin the retirement system as a member of the class from which the person retired.

(d) A person who retired from the employee class of membership with more than 14 years of service credit and who, after retirement, resumed employment with a house of the legislature, not as an employee of an individual member, is entitled, on request to the retirement system, to resume membership in that class and receive service credit for the period served in that position after retirement. to receive the credit, the person is required to pay employee contributions, without interest, for the period of service after retirement. The contributions may be

deducted from the person's annuity as recalculated under this subsection. This subsection does not apply to a person whose post-retirement service extends after January 1, 2007.

SECTION 2. (a) A member of the Employment Retirement System of Texas who is an appointed or elected officer of the 80th Senate of the State of Texas, as determined by the Senate Journal, who has at least 20 years of service credit in the retirement system, may transfer the person's service credit to the elected class. A person who makes a transfer under this provision may continue to transfer the credit between classes before or after retirement.

(b) A member of the Employees Retirement System of Representatives, as determined by the House Journal, and who has also served on the staff of a state judicial agency and who has at least 15 years of service credit in the retirement system, may transfer the person's service credit to the elected class. A person who makes a transfer under this provision may continue to transfer the credit between classes before or after retirement.

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 Talton moved to adopt the conference committee report on **HB 3609**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 3609** prevailed by (Record 1992): 142 Yeas, 2 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; 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; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler(C); Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; 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; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Riddle; 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 — Bonnen; Ritter.

Present, not voting — Mr. Speaker; Turner.

Absent — Deshotel; Mowery; Peña; Pierson.

(Speaker pro tempore in the chair)

HB 3315 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Keffer submitted the following conference committee report on **HB 3315**:

Austin, Texas, May 26, 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 3315** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Duncan	Keffer
Ogden	Y. Davis
Whitmire	McReynolds
Williams	Paxton
Zaffirini	R. Cook
On the part of the senate	On the part of the house

HB 3315, A bill to be entitled An Act relating to the imposition and collection of certain insurance taxes, the adoption of certain reciprocal or multistate agreements relating to those taxes, and the adoption of rules relating to those taxes.

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

SECTION 1. Section 221.002(b), Insurance Code, is amended to read as follows:

(b) Except as provided by Subsection (c), in determining an insurer's taxable premium receipts, the insurer shall include the total gross amounts of premiums, membership fees, assessments, dues, revenues, and any other considerations for insurance written by the insurer in a calendar year from any kind of insurance written by the insurer on each kind of property or risk ~~risks~~ located in this state, including:

- (1) fire insurance;
- (2) ocean marine insurance;
- (3) inland marine insurance;
- (4) accident insurance;
- (5) credit insurance;
- (6) livestock insurance;
- (7) fidelity insurance;
- (8) guaranty insurance;
- (9) surety insurance;
- (10) casualty insurance;
- (11) workers' compensation insurance;

- (12) employers' liability insurance; ~~and~~
- (13) crop insurance written by a farm mutual insurance company; and
- (14) home warranty insurance.

SECTION 2. Section 222.002(b), Insurance Code, is amended to read as follows:

(b) Except as otherwise provided by this section, in determining an insurer's taxable gross premiums or a health maintenance organization's taxable gross revenues, the insurer or health maintenance organization shall include the total gross amounts of premiums, membership fees, assessments, dues, revenues, and other considerations received by the insurer or health maintenance organization in a calendar year from any kind of health maintenance organization certificate or contract or insurance policy or contract covering risks on individuals or groups ~~at a person~~ located in this state and arising from the business of a health maintenance organization or the business of life insurance, accident insurance, health insurance, life and accident insurance, life and health insurance, health and accident insurance, life, health, and accident insurance, including variable life insurance, credit life insurance, and credit accident and health insurance for profit or otherwise or for mutual benefit or protection.

SECTION 3. Section 223.003(a), Insurance Code, is amended to read as follows:

(a) An annual tax is imposed on all ~~each title insurance company that receives~~ premiums from the business of title insurance. The rate of the tax is 1.35 percent of ~~the~~ title insurance ~~company's~~ taxable premiums for a calendar year, including any premiums retained by a title insurance agent as provided by Section 223.005. For purposes of this chapter, a person engages in the business of title insurance if the person engages in an activity described by Section 2501.005.

SECTION 4. Section 225.004, Insurance Code, is amended by adding Subsection (d-1) to read as follows:

(d-1) Notwithstanding Subsections (b) through (d), the comptroller by rule may establish that all premiums are considered to be on risks located in this state:

(1) if the insured's home office or state of domicile or residence is located in this state; or

(2) to accommodate changes in federal statutes or regulations that would otherwise limit the comptroller's ability to directly collect the taxes due under this section.

SECTION 5. Section 225.009, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) The comptroller by rule may change the accrued tax amount for which prepayment is required under Subsection (a) and the prepayment deadline under Subsection (b).

SECTION 6. Chapter 225, Insurance Code, is amended by adding Section 225.014 to read as follows:

Sec. 225.014. LIMITATION ON RULEMAKING. In adopting rules under this chapter, the comptroller may not adopt a rule that exceeds the requirements of this chapter.

SECTION 7. Section 226.003, Insurance Code, is amended by adding Subsection (d-1) to read as follows:

(d-1) Notwithstanding Subsections (b) through (d), the comptroller by rule may establish that all premiums are considered to be on risks located in this state:

(1) if the insured's home office or state of domicile or residence is located in this state; or

(2) to accommodate changes in federal statutes or regulations that would otherwise limit the comptroller's ability to directly collect the taxes due under this section.

SECTION 8. Subchapter A, Chapter 226, Insurance Code, is amended by adding Section 226.006 to read as follows:

Sec. 226.006. LIMITATION ON RULEMAKING. In adopting rules under this subchapter, the comptroller may not adopt a rule that exceeds the requirements of this chapter.

SECTION 9. Section 226.053, Insurance Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) Notwithstanding Subsections (a) and (b), the comptroller by rule may establish that all premiums are considered to be on risks located in this state:

(1) if an insured's home office or state of domicile or residence is located in this state; or

(2) to accommodate changes in federal statutes or regulations that would otherwise limit the comptroller's ability to directly collect the taxes due under this section.

SECTION 10. Subchapter B, Chapter 226, Insurance Code, is amended by adding Section 226.057 to read as follows:

Sec. 226.057. LIMITATION ON RULEMAKING. In adopting rules under this subchapter, the comptroller may not adopt a rule that exceeds the requirements of this chapter.

SECTION 11. Subtitle B, Title 3, Insurance Code, is amended by adding Chapter 228 to read as follows:

CHAPTER 228. COOPERATIVE AGREEMENTS WITH OTHER STATES

Sec. 228.001. DEFINITIONS. In this chapter:

(1) "Agent" includes:

(A) a surplus lines agent, as defined by Section 981.002;

(B) a person licensed as a surplus lines agent by another state; and

(C) any other person who performs the acts of an agent, whether through an oral, written, electronic, or other form of communication, by soliciting, negotiating, procuring, or collecting a premium on an insurance contract.

(2) "Insurer" has the meaning assigned by Section 101.002 and includes:

(A) an insurer that does not hold a certificate of authority in this state;

(B) an eligible surplus lines insurer; and

(C) an insurer that holds a certificate of authority in this state but performs acts outside the scope of its authority under the certificate.

(3) "Premium" includes:

(A) any consideration for insurance, including:

- (i) a premium;
- (ii) a membership fee;
- (iii) an assessment; and
- (iv) dues; or

(B) any other meaning of the term adopted in a cooperative agreement.

(4) "Processing entity" means a processing center or clearinghouse established under a cooperative agreement.

(5) "Stamping office" means the Surplus Lines Stamping Office of Texas or similar stamping offices in other states.

Sec. 228.002. COOPERATIVE AGREEMENTS WITH OTHER STATES.

(a) The comptroller may enter into a cooperative agreement, reciprocal agreement, or compact with another state for the collection of insurance premium taxes imposed by Chapters 225 and 226 on a multistate basis. An agreement or amendment of an agreement takes effect according to its terms, except that an agreement or amendment may not take effect until the proposed agreement or amendment is published in the Texas Register.

(b) An agreement may provide for:

(1) determining a base state and multistate allocation of insurance premiums;

(2) tax reporting requirements;

(3) audit and refund claim procedures;

(4) exchange of information;

(5) requirements for reporting on a multistate basis;

(6) insurance and tax related terms and definitions;

(7) penalties, fees, administrative costs, and interest rates;

(8) audit assessment and refund claim limitation periods;

(9) procedures for collecting amounts due from agents, insurers, or other persons and for collecting and forwarding the amounts due to the jurisdiction to which the amount is owed;

(10) procedures for verifying refund claims by agents, insurers, or other persons and for collecting those amounts from the jurisdiction owing the refund amount;

(11) the temporary remittal of funds equal to the amounts due to another jurisdiction, subject to appropriation of funds for that purpose; and

(12) other provisions to facilitate the administration of the agreement.

(c) The comptroller may, as required by the terms of an agreement, provide to an officer of another state any information that relates to the solicitation, negotiation, procurement, placement, issuance, receipt, or collection of premiums by an agent, insurer, or other person for an insurance contract or policy that may be subject to the premium taxes imposed by Chapter 225 or 226.

(d) An agreement may provide for each state to audit the records of an agent, insurer, or other person based in this state to determine if insurance premium taxes due each state that is a party to the agreement are properly

reported and paid. An agreement may provide for each state to forward the findings of an audit performed on an agent, insurer, or other person based in this state to each other state in which the person has an allocation of taxable premiums.

(e) For an agent, insurer, or other person who has an allocation of taxable premiums in this state, the comptroller may use an audit performed by another state that is a party to an agreement with this state to make an assessment of insurance premium taxes against the agent, insurer, or other person. An assessment made by the comptroller under this subsection is prima facie evidence that the amount shown as due is correct.

(f) An agreement entered into under this section does not affect the comptroller's authority to audit any person under any other law.

(g) An agreement entered into under this section prevails over an inconsistent rule of the comptroller. Except as otherwise provided by this section, a statute of this state prevails over an inconsistent provision of an agreement entered into under this section.

(h) The comptroller may segregate in a separate fund or account the amount estimated to be due to other jurisdictions, amounts subject to refund during the fiscal year, fees, and other costs collected under the agreement. On a determination of an amount held that is due to be remitted to another jurisdiction, the comptroller may issue a warrant or make an electronic transfer of the amount as necessary to carry out the purposes of the agreement. An auditing cost, membership fee, or other cost associated with the agreement may be paid from interest earned on funds segregated under this subsection. Any interest earnings in excess of the costs associated with the agreement shall be credited to general revenue.

(i) The legislature finds that it is in the public interest to enter into insurance tax and regulatory agreements with other jurisdictions that may provide for the temporary remittance of amounts due other jurisdictions that exceed the amounts collected and for cooperation with other jurisdictions for the collection of taxes imposed by this state under Chapters 225 and 226 and similar taxes imposed under statutes of other jurisdictions on insurance premiums. The comptroller shall ensure that reasonable measures are developed to recover insurance taxes and other amounts due this state during each biennium.

(j) The comptroller may enter into a cooperative agreement, reciprocal agreement, or compact with another state to provide for the collection of taxes imposed by this state and the other states on insurance taxes that may be due the states and this state based on a standardized premium allocation adopted by the states under the agreement. The comptroller may also enter into other cooperative agreements with surplus lines stamping offices located in this state and other states in the reporting and capturing of related tax information. In addition, the comptroller may enter into cooperative agreements with processing entities located in this state or other states related to the capturing and processing of insurance premium and tax data.

(k) The comptroller may adopt rules as necessary to implement this chapter. In adopting rules under this chapter, the comptroller may not adopt a rule that does not specifically implement this section.

SECTION 12. Section 252.003, Insurance Code, is amended to read as follows:

Sec. 252.003. PREMIUMS SUBJECT TO TAXATION. An insurer shall pay maintenance taxes under this chapter on the correctly reported gross premiums ~~collected~~ from writing insurance in this state against loss or damage by:

- (1) bombardment;
- (2) civil war or commotion;
- (3) cyclone;
- (4) earthquake;
- (5) excess or deficiency of moisture;
- (6) explosion as defined by Article 5.52;
- (7) fire;
- (8) flood;
- (9) frost and freeze;
- (10) hail, including loss by hail on farm crops;
- (11) insurrection;
- (12) invasion;
- (13) lightning;
- (14) military or usurped power;
- (15) an order of a civil authority made to prevent the spread of a conflagration, epidemic, or catastrophe;
- (16) rain;
- (17) riot;
- (18) the rising of the waters of the ocean or its tributaries;
- (19) smoke or smudge;
- (20) strike or lockout;
- (21) tornado;
- (22) vandalism or malicious mischief;
- (23) volcanic eruption;
- (24) water or other fluid or substance resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes, or other conduits or containers;
- (25) weather or climatic conditions; ~~[or]~~
- (26) windstorm;
- (27) an event covered under a home warranty insurance policy; or
- (28) an event covered under an inland marine insurance policy.

SECTION 13. Section 254.003, Insurance Code, is amended to read as follows:

Sec. 254.003. PREMIUMS SUBJECT TO TAXATION. An insurer shall pay maintenance taxes under this chapter on the correctly reported gross premiums from writing motor vehicle insurance in this state, including personal and commercial automobile insurance.

SECTION 14. Section 257.001, Insurance Code, is amended to read as follows:

Sec. 257.001. MAINTENANCE TAX IMPOSED. (a) A maintenance tax is imposed on each authorized insurer, including a group hospital service corporation, managed care organization, local mutual aid association, statewide mutual assessment company, stipulated premium company, and stock or mutual insurance company, that collects from residents of this state gross premiums or gross considerations subject to taxation under Section 257.003. The tax required by this chapter is in addition to other taxes imposed that are not in conflict with this chapter.

(b) In this section, "managed care organization" means an organization authorized under this code to engage in the business of issuing health benefit plans that is not authorized as a health maintenance organization, preferred provider organization, or insurance company and the taxation of which is not preempted by federal law.

SECTION 15. Section 271.002(a), Insurance Code, is amended to read as follows:

(a) A maintenance fee is imposed on all ~~[each insurer with gross]~~ premiums subject to assessment under Section 271.006.

SECTION 16. Subchapter A, Chapter 281, Insurance Code, is amended by adding Section 281.008 to read as follows:

Sec. 281.008. RECIPROCITY AGREEMENTS. The comptroller by rule may enter into a reciprocity agreement with another state under which the parties agree to mutually set aside retaliatory provisions in situations in which this state and the other state determine that retaliation is not the preferred approach to protect their domestic insurers from excessive taxation or other financial obligations. In adopting rules under this section, the comptroller may not adopt a rule that does not specifically implement this section.

SECTION 17. Section 401.151(e), Insurance Code, is amended to read as follows:

(e) The amount of all examination and evaluation fees paid to the state by an insurer in each taxable year shall be allowed as a credit on the amount of premium taxes due ~~[under this subchapter]~~.

SECTION 18. Section 401.154, Insurance Code, is amended to read as follows:

Sec. 401.154. TAX CREDIT AUTHORIZED. An insurer is entitled to a credit on the amount of premium ~~[or other]~~ taxes to be paid by the insurer for all examination fees paid under Section 401.153. The insurer may take the credit for the taxable year during which the examination fees are paid and may take the credit to the same extent the insurer may take a credit for examination fees paid when a salaried department examiner conducts the examination.

SECTION 19. Section 1502.053, Insurance Code, is amended to read as follows:

Sec. 1502.053. EXEMPTION FROM CERTAIN TAXES. (a) The issuer of a children's health benefit plan approved under Section 1502.051 is not subject to the premium tax or the tax on revenues imposed under Chapter 222 with respect to money received for coverage provided under that plan.

(b) The issuer of a children's health benefit plan approved under Section 1502.051 is not subject to the retaliatory tax imposed under Chapter 281 with respect to money received for coverage provided under that plan.

SECTION 20. Section 2007.002, Insurance Code, is amended to read as follows:

Sec. 2007.002. ASSESSMENT. The comptroller shall assess against all insurers to which this chapter applies a combined total of \$30 [~~\$15~~] million for each 12-month period.

SECTION 21. Section 2210.058(c), Insurance Code, is amended to read as follows:

(c) An insurer may credit an amount paid in accordance with Subsection (a)(4) in a calendar year against the insurer's premium tax under Chapter 221. The tax credit authorized under this subsection shall be allowed at a rate not to exceed 20 percent per year for five or more successive years beginning [following] the calendar year that the assessments under this section are paid [of payment of the claims]. The balance of payments made by the insurer and not claimed as a premium tax credit may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in an annual statement under Section 862.001.

SECTION 22. (a) Article 4.11A, Insurance Code, is repealed.

(b) Sections 281.006(a) and 2007.009, Insurance Code, are repealed.

SECTION 23. Section 2007.002, Insurance Code, as amended by this Act, does not apply to an assessment under Section 2007.004, Insurance Code, that is made by the comptroller on or before September 1, 2007.

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.

Representative Keffer moved to adopt the conference committee report on **HB 3315**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 3315** prevailed by (Record 1993): 147 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 Tourelles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; 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; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

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

Absent — Thompson.

HB 3382 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Naishtat submitted the following conference committee report on **HB 3382**:

Austin, Texas, May 26, 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 3382** 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	Naishtat
Janek	Berman
Shapiro	D. Howard
Williams	Leibowitz
Zaffirini	McCall
On the part of the senate	On the part of the house

HB 3382, A bill to be entitled An Act relating to providing certain electronic copies of instructional material for blind and visually impaired students and students with dyslexia who are enrolled at public institutions of higher education.

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

SECTION 1. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.970 to read as follows:

Sec. 51.970. INSTRUCTIONAL MATERIAL FOR BLIND AND VISUALLY IMPAIRED STUDENTS AND STUDENTS WITH DYSLEXIA. (a) In this section:

(1) "Blind or visually impaired student" includes any student whose visual acuity is impaired to the extent that the student is unable to read the print in the standard instructional material used in a course in which the student is enrolled.

(2) "Coordinating board" means the Texas Higher Education Coordinating Board.

(3) "Dyslexia" means a condition of dyslexia considered to be a disability under the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.) or Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794).

(4) "Institution of higher education" has the meaning assigned by Section 61.003.

(5) "Instructional material" means a printed textbook or other printed instructional material or a combination of a printed book and supplementary printed instructional material that:

(A) conveys information to or otherwise contributes to the learning process of a student; and

(B) was published on or after January 1, 2004.

(6) "Special instructional material" means instructional material in Braille, large print, audio format, digital text, or any other medium or any apparatus that conveys information to or otherwise contributes to the learning process of a blind or visually impaired student or a student with dyslexia.

(b) This section applies only to instructional material that is:

(1) written and published primarily for postsecondary instruction of students; and

(2) required or essential for a student's success in a course at an institution of higher education, as identified by the instructor of the course for which the instructional material will be used, in consultation with the person at the institution with primary responsibility for services for students with disabilities and in accordance with rules adopted under Subsection (i)(1).

(c) To assist the institution in producing special instructional material, a publisher or manufacturer of instructional material assigned by an institution of higher education for use by students in connection with a course at the institution shall provide to the institution on the institution's request in accordance with this section a copy in an electronic format of the instructional material. The publisher or manufacturer, as applicable, shall provide the electronic copy not later than the 15th business day after the date of receipt of the request.

(d) A request made by an institution of higher education under Subsection (c) must:

(1) certify that for each blind or visually impaired student or student with dyslexia who will use specialized instructional material based on the requested copy of the material in an electronic format for a course in which the student is enrolled at the institution, either the institution or the student has purchased a printed copy of the instructional material; and

(2) be signed by the person at the institution with primary responsibility for services for students with disabilities.

(e) A publisher or manufacturer may require that a request made by an institution of higher education under Subsection (c) include from each student for whom the institution is making the request a signed statement in which the student agrees:

(1) to use the requested electronic copy and related special instructional material only for the student's own educational purposes; and

(2) not to copy or otherwise distribute in a manner that violates 17 U.S.C. Section 101 et seq. the requested electronic copy or the instructional material on which the requested electronic copy is based.

(f) Each electronic copy of instructional material must:

(1) be in a format that:

(A) except as provided by Subsection (g), contains all of the information that is in the instructional material, including any text, sidebar, table of contents, chapter headings, chapter subheadings, footnotes, index, glossary, and bibliography, and is approved by the publisher or manufacturer, as applicable, and the institution of higher education as a format that will contain that material; and

(B) is compatible with commonly used Braille translation and speech synthesis software; and

(2) include any correction or revision available at the time the electronic copy is provided.

(g) If the publisher or manufacturer and the institution of higher education are not able to agree on a format as required by Subsection (f)(1)(A), the publisher or manufacturer, as applicable, shall provide the electronic copy of the instructional material in a format that can be read by a word processing application and that contains as much of the material specified by that subsection as is practicable.

(h) The coordinating board may impose a reasonable administrative penalty, not to exceed \$250 per violation, against a publisher or manufacturer that knowingly violates this section. The coordinating board shall provide for a hearing to be held, in accordance with coordinating board rule, to determine whether a penalty is to be imposed and the amount of any penalty. The coordinating board shall base the amount of any penalty on:

(1) the seriousness of the violation;

(2) any history of a previous violation;

(3) the amount necessary to deter a future violation;

(4) any effort to correct the violation; and

(5) any other matter justice requires.

(i) The coordinating board, in consultation with an advocacy organization for persons who are blind or visually impaired, an advocacy organization for persons with dyslexia, representatives from one or more instructional material publishing companies or publishing associations, and institutions of higher education, shall adopt rules for administering this section, including rules that address:

(1) the method for identifying instructional material considered to be required or essential for a student's success in a course;

(2) the procedures and standards relating to distribution of electronic copies of instructional material under this section; and

(3) any other matter considered necessary or appropriate for the administration of this section.

(j) Notwithstanding any other provision of this section, a publisher or manufacturer is not required to comply with Subsection (c) or (f), as applicable, if the coordinating board, using procedures and criteria adopted by coordinating board rule and based on information provided by the publisher or manufacturer, determines that:

(1) compliance by the manufacturer or publisher would violate a law, rule, or regulation relating to copyrights; or

(2) the instructional material on which the requested electronic copy is based is:

(A) out of print; or

(B) in a format that makes it impracticable to convert the material into an electronic format.

SECTION 2. (a) Section 51.970, Education Code, as added by this Act, applies beginning with requests for electronic copies of printed instructional material assigned for use by students in the 2008 spring semester.

(b) Not later than November 1, 2007, the Texas Higher Education Coordinating Board shall adopt rules as required by Section 51.970(i), Education Code, as added by this Act.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

Representative Naishtat moved to adopt the conference committee report on **HB 3382**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 3382** prevailed by (Record 1994): 142 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; Darby; Davis, J.; Davis, Y.; Delisi; 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; Harless; 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; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; 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 — Crownover; Deshotel; Hodge; McClendon; Mowery; Peña.

HB 3851 - RULES SUSPENDED

Representative Morrison moved to suspend all necessary rules to consider the conference committee report on **HB 3851**.

The motion prevailed.

HB 3851 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Morrison submitted the following conference committee report on **HB 3851** :

Austin, Texas, May 26, 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 3851** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Shapiro
Nelson
Carona

Morrison
Aycock
F. Brown
Patrick
Rose

On the part of the senate

On the part of the house

HB 3851, A bill to be entitled An Act relating to the admission of high school graduates and undergraduate transfer students to certain institutions of higher education, the computation of a student's high school grade point average for purposes of determining eligibility for admission, and policies to promote the admission of undergraduate transfer students.

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

SECTION 1. Section 28.0252(b), Education Code, is amended to read as follows:

(b) If the commissioner develops a standard method under this section, a school district shall use the standard method to compute a student's high school grade point average, except that to the extent of a conflict between that method and the method adopted under Section 51.807, [and] the student's grade point average computed in accordance with the method established under Section 51.807 [that manner] shall be used in determining the student's eligibility for university [automatic college] admission under Subchapter U, Chapter 51 [Section 51.803].

SECTION 2. Section 51.807, Education Code, is amended to read as follows:

Sec. 51.807. RULEMAKING. (a) To ensure a uniform standard for admissions under this subchapter, the [The] Texas Higher Education Coordinating Board shall adopt rules establishing a standard method for computing a student's high school grade point average. The method established under this subsection:

(1) must:

(A) be based on a four-point scale; and

(B) assign additional weight for each honors course, advanced placement course, international baccalaureate course, or dual credit course completed by the student as the board considers appropriate, taking into consideration the academic rigor of each course completed by the student; and

(2) may result in a student having a grade point average higher than 4.0 on a four-point scale as a result of the assignment of additional weight for one or more courses completed by a student under Subdivision (1)(B).

(b) The board may adopt other rules relating to the operation of admissions programs under this subchapter, including rules relating to the identification of eligible students [and the reporting requirements of Section 51.806].

(c) The standard method established under Subsection (a) for computing a student's high school grade point average applies to computing the grade point average of a student applying as a first-time freshman for admission to a general academic teaching institution beginning with admissions for the 2009 fall semester. This subsection expires January 1, 2010.

SECTION 3. Section 51.4032, Education Code, as added by Chapter 694, Acts of the 79th Legislature, Regular Session, 2005, is amended to read as follows:

Sec. 51.4032. ANNUAL REPORT OF PARTICIPATION IN HIGHER EDUCATION. Not later than December 1 [July 31] of each year and in the form prescribed by the coordinating board, each general academic teaching institution and medical and dental unit as defined in Section 61.003 shall provide to the Texas Higher Education Coordinating Board and shall publish on the institution's website a report describing the composition of the institution's entering class of students. The report must include a demographic breakdown of the class, including a breakdown by race, ethnicity, [and] economic status, and high school class standing. A report submitted by a general academic teaching institution or medical and dental unit as defined in Section 61.003 must include separate demographic breakdowns of the students admitted under Sections 51.803, 51.804, and 51.805 and a description of any plans, policies, or programs developed or implemented by the institution to recruit and retain students from underrepresented groups such as racial or ethnic minority groups.

SECTION 4. Section 51.808, Education Code, is amended to read as follows:

Sec. 51.808. APPLICATION OF ADMISSION CRITERIA TO OTHER PROGRAMS. (a) Each general academic teaching institution or medical and dental unit that offers admissions to undergraduate transfer students or admissions to a graduate, postgraduate, or professional program shall [~~also~~] adopt a written admission policy applicable to those programs.

(b) Each general academic teaching institution shall adopt a written admission policy to promote the admission of undergraduate transfer students to the institution. The policy must provide for outreach and recruiting efforts directed at junior colleges and other lower-division institutions of higher education and may include incentives to encourage transfer applications and to retain and promote transfer students.

(c) A [The] policy adopted under this section shall be published in the institution's or unit's catalog and made available to the public.

SECTION 5. The Texas Higher Education Coordinating Board shall adopt rules as required by Section 51.807, Education Code, as amended by this Act, as soon as practicable after the effective date of this Act.

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 Morrison moved to adopt the conference committee report on **HB 3851**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 3851** prevailed by (Record 1995): 142 Yeas, 2 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; 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; 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; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; 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; Patrick; Paxton; Peña; 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.

Nays — Branch; Phillips.

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

Absent — Deshotel; Hamilton; King, S.; Thompson.

POINT OF ORDER

Representative Herrero raised a point of order against further consideration of conference committee reports under Rule 8, Section 13(c) of the House Rules on the grounds that the deadline for consideration of conference committee reports had passed, and because the deadline was past, Representative Herrero additionally moved that the house adjourn.

The point of order was withdrawn.

PARLIAMENTARY INQUIRY

REPRESENTATIVE DUNNAM: I'm not advocating the motion, but Mr. Herrero did make a motion to adjourn, and I just wanted to know—

SPEAKER PRO TEMPORE: He was not recognized for that purpose.

DUNNAM: So it's the chair's opinion that the chair has the power to not even recognize a motion to adjourn?

SPEAKER PRO TEMPORE: That is correct. He was not recognized for that purpose. The chair had indicated earlier to all other members that once we got to 12:00 a.m. we were going to take each bill, one by one, and allow the member to decide whether or not they wanted to suspend the rules on each one of those bills until we completed the calendar.

DUNNAM: I understand that. I don't want to adjourn. I just want to make sure that's clear. I don't want to adjourn, but I believe that a motion to adjourn is something under the rules that the chair has to recognize, and I want to know, does the chair of the opinion that the chair doesn't have the obligation to recognize a motion to adjourn?

SPEAKER PRO TEMPORE: The chair does not have to recognize that motion to adjourn, Representative Dunnam.

DUNNAM: I would like to appeal that ruling.

SPEAKER PRO TEMPORE: It is an answer to a parliamentary inquiry.

DUNNAM: No, Mr. Herrero moved to adjourn, and if he has not withdrawn that motion, then the chair has denied that.

SPEAKER PRO TEMPORE: Representative Dunnam, Representative Herrero was not recognized for a motion to adjourn. He was not recognized for that purpose.

DUNNAM: You said bring it down front—

SPEAKER PRO TEMPORE: The point of order—

DUNNAM: You did not say—

SPEAKER PRO TEMPORE: It was a point of order, Representative Dunnam. He raised a point of order. I asked him to bring the point of order down front.

DUNNAM: Do you really believe that you don't have to recognize a motion to adjourn? Do you really believe that? Mr. Wilson is up there smiling up there, laughing about it. I mean, motions allowed during a debate: "When a question is

under debate, the following motions, and none other, shall be in order and such motions shall have precedence in the following order: number one—to adjourn." And you're saying that you don't even have to recognize that even though the rule says, "When a question is under debate, the following motions, and none other, shall be in order and such motions shall have precedence."

SPEAKER PRO TEMPORE: The rule says it shall be in order, but not recognized, Representative Dunnam.

DUNNAM: And I would like to appeal the ruling of the chair on that ruling.

SPEAKER PRO TEMPORE: It's not a ruling, Representative Dunnam.

DUNNAM: What is it then, Sylvester? What is it?

SPEAKER PRO TEMPORE: One second Representative Dunnam, I will always be respectful to you—

DUNNAM: And I am. You know that.

SPEAKER PRO TEMPORE: Let me finish.

DUNNAM: We're friends.

SPEAKER PRO TEMPORE: Let me finish.

DUNNAM: We're friends.

SPEAKER PRO TEMPORE: Let me finish. I will always be respectful to you, and I would require that you be respectful to me.

DUNNAM: And I think I am being.

SPEAKER PRO TEMPORE: The chair has ruled. He was not recognized for that purpose.

DUNNAM: And I'll again—I would like to appeal that ruling of the chair.

SPEAKER PRO TEMPORE: It is not an appealable motion, Representative Dunnam.

DUNNAM: Mr. Speaker, I would like to move that we adjourn.

SPEAKER PRO TEMPORE: In Rule 1—

DUNNAM: I would like to move that we adjourn.

SPEAKER PRO TEMPORE: In Rule 1, Section 9, it says, "Responses to parliamentary inquiries and decisions of recognition made by the chair may not be appealed."

DUNNAM: The rule says, Mr. Speaker, "During debate, the following motions shall be in order and they shall have precedence over any other order." So we're debating issues here today so automatically a motion to adjourn is in order and it shall have precedence over any other person.

SPEAKER PRO TEMPORE: Representative Dunnam, I understand your position. The chair has made its ruling.

DUNNAM: I understand that and I would like the body to have the opportunity to vote to overrule the chair or sustain the chair, whatever they agree, on the motion to adjourn. And Mr. Speaker, respectfully, respectfully, until we had these two new parliamentarians we didn't have any of these problems. This has never come up in the history of the Texas Legislature.

SPEAKER PRO TEMPORE: Representative Dunnam, under Rule 1, Section 9, it says, "Responses to parliamentary inquiries and decisions of recognition made by the chair may not be appealed." That is what the rule book says, Representative Dunnam.

DUNNAM: And the congressional precedence is clear that matters of privilege require recognition—we went over that before. I don't want to adjourn, but I have to stand up on behalf of a fellow member who may make a motion, that is a privileged motion, that is the motion, according to our rules, the highest motion you can make in this chamber, is the motion to adjourn.

SPEAKER PRO TEMPORE: Representative Dunnam, I understand that that is your interpretation. The chair has made its position, and I would like to proceed with the business of the day.

DUNNAM: And it says, Mr. Speaker, that in the comment—we are all working. We're all working to preserve the rules of this institution, that people have served in for over 100 years. We're working very hard to preserve democracy in the State of Texas. That's what we're doing. So, Mr. Speaker, under the comment, under the rule, "After the motion to adjourn is made ..." It doesn't say after it has been recognized. It says, "After any member has made the motion, neither another motion nor an appeal may intervene before the taking of the vote." "After the motion is made ..." It doesn't say after the chair recognizes someone to make the motion. It is after the motion is made, and Mr. Speaker, if we can pull the books, you will recall those of us who studied the history of this body. Back in 1971, people made five or six motions to adjourn a day, when they we're trying to disrupt the proceedings, but they still recognized them because it is not subjected to 5.24.

SPEAKER PRO TEMPORE: Mr. Dunnam, under Rule 5, Section 24, on recognition, it says that "there shall be no appeal from the speaker's recognition, but the speaker shall be governed by rules and uses them as priority of entertaining motions from the floor. When a member seeks recognition, the speaker may ask for what purpose does the member rise or for what purpose does a member seek recognition, and may then decide if recognition is to be granted." When you couple that then with Rule 1, Section 9, the last sentence of subsection B, it reads, "Responses to parliamentary inquiries and decisions of recognition made by the chair may not be appealed."

DUNNAM: And that is a very general rule, and if we look at Rule 7, Section 7—

SPEAKER PRO TEMPORE: Will all members please take your seats. The chair intends to proceed with the order of the day.

DUNNAM: Mr. Speaker?

SPEAKER PRO TEMPORE: For what purpose Representative Dunnam?

DUNNAM: I was in the middle of my parliamentary inquiry. May I proceed?

SPEAKER PRO TEMPORE: State your inquiry Representative Dunnam.

DUNNAM: When—and you have two lawyers with you—when rules are general in nature, they are always overruled by rules that are specific in nature. That is fundamental statutory construction that we learn the first year in law school. Rule 5, Section 24, is general in nature. The rule that I've sited and the comment that I've sited are specific in nature, in that "when a question is under debate the following motions, and none other, shall be in order." They shall be in order. Shall be in order means that they are required to be recognized, and "such precedence shall be followed in the following order" and number one is the motion to adjourn. The comment is specific, "After the motion to adjourn is made ..." Not after the motion is recognized. "After the motion is made, neither another motion nor an appeal may intervene before the taking of the vote." Those are specific requirements in our rules. And it's unfortunate that we have frustration on the house floor, but the frustration results from the sudden departure of the parliamentarians and the sudden changing of the rules, as of Friday night. And I would plead with the chair, let's follow these rules, and all the chair has to say is a motion to adjourn has precedence. I'm going to vote against it, but we have to have the rules, otherwise we devolve into this.

SPEAKER PRO TEMPORE: Representative Dunnam—

DUNNAM: And it might be funny to Mr. Wilson, but it's not to me.

SPEAKER PRO TEMPORE: Mr. Dunnam, I respect your view and your interpretation. I respect your view and your interpretation.

DUNNAM: Is there any mechanism, is there any mechanism at all, where this body of the legislature can do anything but have to follow whatever dictates comes from the chair? Is there any method?

SPEAKER PRO TEMPORE: And Mr. Representative, again, I respect your view and your interpretation, but it's the chair's decision for a motion to adjourn to be in order, it must be recognized. I recognized Representative Herrero for his point of order. The chair did not recognize him on a motion to adjourn, and I would like to proceed with the business of the day.

REMARKS ORDERED PRINTED

Representative Dunnam moved to print remarks between the speaker pro tempore and Representative Dunnam.

The motion prevailed.

HERRERO: Just for clarification purposes, and I guess parliamentary inquiry because when I was recognized I made a point of order and a motion to adjourn.

SPEAKER PRO TEMPORE: And Representative Herrero, the chair only heard the motion of the point of order. I did not recognize you on the motion to adjourn.

HERRERO: That distinction was not made to me at any time, Mr. Speaker.

SPEAKER PRO TEMPORE: I'm sorry?

HERRERO: That distinction was not made either to me and I'm not sure it was made to the house.

SPEAKER PRO TEMPORE: Representative Herrero, the chair only heard the motion of the point of order, and that's why I asked you to bring the point of order down. I did not hear a motion to adjourn. I did not hear that.

HERRERO: I respectfully disagree with you.

SPEAKER PRO TEMPORE: And the chair would not have recognized the motion to adjourn. I did respect and recognize you on the point of order, and that's why I asked you to bring it down.

HERRERO: I would respectfully disagree with you, Mr. Speaker, and I think that the tapes will show and verify what I am saying is correct.

SPEAKER PRO TEMPORE: I'm not saying Mr. Herrero that you did not say it, what I'm indicating is that the chair only heard the motion of the point of order. The chair did not hear anything as to the relation of the motion to adjourn. And I asked you to bring down the point of order, and that's what we wanted to visit with you on was the point of order.

HERRERO: I would disagree with you, Mr. Speaker, but I think that the tape will show otherwise.

REMARKS ORDERED PRINTED

Representative Herrero moved to print remarks between the speaker pro tempore and Representative Herrero.

The motion prevailed.

ADDRESS BY REPRESENTATIVE KRUSEE ON A MATTER OF PERSONAL PRIVILEGE

The chair recognized Representative Krusee who addressed the house on a matter of personal privilege, speaking as follows:

Thank you, Mr. Speaker, for recognizing me to speak. Members, I wish to speak on the chair's ruling regarding recognition.

The speaker has ruled that he has the absolute right to refuse recognition of any member, and to refuse recognition of any motion, no matter how privileged.

I disagree with the ruling, and I disagree with its implementation. The ruling is wrong because, on matters of privilege, the speaker does not have the right to deny recognition. The implementation is wrong because, even if you agree with the ruling that the speaker has absolute discretion on all matters, and I do not agree, it is an abuse of discretion to withhold recognition on matters of the highest principle. To refuse to recognize members is against our tradition and our practice. Mr. Speaker, you have daily used your discretion to recognize members on a routine basis. Why not on this one?

Since the days of Thomas Jefferson, the father of parliamentary law in the United States, questioning the leadership of the presiding officer has been the most fundamental right of the members who elected that leadership. Just as the power of government comes from its people's consent, the power to conduct the business of our body, the power to govern our body, comes from the consent of our body. Mr. Speaker, we can disagree on many things, but you cannot disagree with the fact that you are here because we put you here. Inherent in the granting of power to the speaker is the retention of our right to speak and to question the presiding officer. This rules interpretation denies us that right. I again emphasize: questioning leadership is the highest privilege this body has. And it belongs to the body, not to the presiding officer.

To my former colleagues, and my current friends, sitting behind me, who have advised the speaker on this ruling, I ask you to put yourself in my position. How would you feel as a member? As former members, you both have unique perspectives. You walked in our shoes. Would you find this acceptable?

Mr. Keel, in one of your last moments on this floor, you addressed this house as a matter of personal privilege. You were in the minority, having killed the pay raise the majority favored. Now you sit there, advising the speaker that it is within the rules to deny us that right. How would you have felt if the speaker had denied you that right? How can you advise the speaker that he may do that to us? The Republican Party is now engaged in trying to spin this into, of all things, a partisan issue. They are saying that the Republican position is to uphold the speaker's right to deny the right to speak, to vote. What a perversion, especially for a party in the minority in Washington. Absolute power to deny the right to question authority is not a principle of the Republican Party, or any party. Not in this country. Not in this country.

One of my heroes, Ronald Reagan, once said, "Mr. Gorbachev, tear down this wall." The wall was physical and it was metaphorical. It was a barrier to freedom. It silenced people's voices. This interpretation of our rules has erected a wall between leadership and the membership. Mr. Speaker, we must tear it down.

ADDRESS BY REPRESENTATIVE HAGGERTY ON A MATTER OF PERSONAL PRIVILEGE

The chair recognized Representative Haggerty who addressed the house on a matter of personal privilege (in accordance with Rule 5, Section 36 of the House Rules a portion of this personal privilege address has been omitted), speaking as follows:

Mr. Speaker and members, last week we sat in this very house, and met the mothers, and the fathers, and the widows, and the children of young men and women who had gone to Iraq and Afghanistan to try to develop democracy in those countries and oust dictators. Can we demand less than that of ourselves? Everybody in this house knows where we stand. We have a speaker who will not allow a vote on whether the people who elected him have the right to take him out of office. What has it done? For the last 48 hours, it has been the only big elephant in the room. Friends, people that we work with, those of you we served

on committees with, from seven in the morning until midnight and later, all of a sudden, are carving at each other, are yelling at each other, because we stand on different sides of this particular issue. It needs to end, and the only way that it can possibly end is to find out where we stand. In the paper this morning, it said very, very clearly, that the speaker thinks he has the votes to keep him in office. We can end all of that right now. We can end all of that right here this evening. I have here a list of the members of this body. An aye vote says the speaker should go, a no vote says the speaker should stay.

SPEAKER PRO TEMPORE: I would ask that you recognize your personal privilege, and respect the members for choosing to speak or not to speak in their own right.

HAGGERTY: Mr. Speaker, then I ask that all members who said aye, or would have said aye, to join me in taking your key and leaving.

HR 2894 - RULES SUSPENDED

Representative P. King moved to suspend all necessary rules to consider the conference committee report on **HR 2894**.

The motion prevailed.

HR 2894 - MOTION TO ADOPT (by P. King)

The following privileged resolution was laid before the house:

HR 2894

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)(1), 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 1386** (regulation of the decommissioning costs of certain nuclear-powered commercial electric generating units) to consider and take action on changing text that is not in disagreement in the proposed Subsection (k)(1), Section 39.206, Utilities Code, to read:

(k) The commission shall adopt rules necessary to ensure that:

(1) a power generation company remits sufficient funds to a nuclear decommissioning trust on an annual basis, including projected earnings to approximate the amount remaining to be accumulated to cover the cost of decommissioning a nuclear generating unit at the end of its operating license period divided by the remaining years of the license and in accordance with applicable state and federal laws and regulations or over a shorter period of time at the election of the power generation company;

Explanation: The alteration of the text not in disagreement is necessary to clarify how the Public Utility Commission of Texas is to determine the annual amount of funds sufficient to pay the costs of decommissioning and decontaminating a nuclear generating unit.

A record vote was requested.

The outcome of the motion to adopt could not be determined (a quorum not being present) by (Record 1996): 94 Yeas, 0 Nays, 0 Present, not voting.

Yeas — Mr. Speaker; Anderson; Aycock; Bailey; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Chisum; Christian; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Delisi; Driver; Dukes; Dutton; Eissler; Elkins; England; Farabee; Flores; Flynn; Frost; Gattis; Geren; Giddings; Goolsby; Guillen; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Heflin; Hilderbran; Hopson; Howard, C.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Kolkhorst; Kuempel; Latham; Laubenberg; Macias; Madden; McClendon; McReynolds; Menendez; Miller; Morrison; Murphy; O'Day; Orr; Otto; Parker; Patrick; Paxton; Phillips; Puente; Quintanilla; Riddle; Ritter; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Taylor; Thompson; Truitt; Turner(C); Van Arsdale; West; Woolley; Zedler; Zerwas.

Absent — Allen; Alonzo; Anchia; Bolton; Burnam; Castro; Chavez; Cohen; Coleman; Cook, B.; Davis, Y.; Deshotel; Dunnam; Eiland; Escobar; Farias; Farrar; Gallego; Garcia; Gonzales; Gonzalez Toureilles; Haggerty; Hernandez; Herrero; Hill; Hochberg; Hodge; Homer; Howard, D.; Krusee; Leibowitz; Lucio; Mallory Caraway; Martinez; Martinez Fischer; McCall; Merritt; Miles; Moreno; Mowery; Naishtat; Noriega; Oliveira; Olivo; Ortiz; Peña; Pickett; Pierson; Pitts; Raymond; Rodriguez; Talton; Vaught; Veasey; Villarreal; Vo.

STATEMENTS OF VOTE

When Record No. 1996 was taken, my vote failed to register. I would have voted yes.

Homer

When Record No. 1996 was taken, I was in the house but away from my desk. I would have voted yes.

Merritt

ADJOURNMENT

The speaker pro tempore announced that the house would adjourn until 2 p.m. today, May 28.

The house accordingly, at 12:43 a.m., adjourned until 2 p.m. today, May 28.

ADDENDUM

SIGNED BY THE SPEAKER

The following bills and resolutions were today signed in the presence of the house by the speaker:

House List No. 48

HB 88, HB 147, HB 160, HB 191, HB 426, HB 460, HB 463, HB 470, HB 473, HB 581, HB 586, HB 730, HB 735, HB 779, HB 860, HB 866, HB 914, HB 930, HB 946, HB 1060, HB 1066, HB 1093, HB 1141, HB 1196, HB 1205, HB 1314, HB 1391, HB 1473, HB 1495, HB 1498, HB 1503, HB 1526, HB 1541, HB 1551, HB 1563, HB 1594, HB 1610, HB 1637, HB 1680, HB 1748, HB 1751, HB 1786, HB 1857, HB 1886, HB 1960, HB 1973, HB 1988, HB 2060, HB 2120, HB 2198, HB 2285, HB 2291, HB 2300, HB 2392, HB 2402, HB 2426, HB 2458, HB 2460, HB 2482, HB 2498, HB 2502, HB 2532, HB 2541, HB 2566, HB 2621, HB 2641, HB 2653, HB 2701, HB 2702, HB 2714, HB 2738, HB 2762, HB 2783, HB 2859, HB 2864, HB 2935, HB 2978, HB 2982, HB 2994, HB 3064, HB 3101, HB 3105, HB 3184, HB 3190, HB 3199, HB 3271, HB 3275, HB 3309, HB 3358, HB 3378, HB 3417, HB 3426, HB 3440, HB 3441, HB 3443, HB 3475, HB 3496, HB 3517, HB 3518, HB 3554, HB 3571, HB 3575, HB 3584, HB 3594, HB 3618, HB 3630, HB 3678, HB 3692, HB 3694, HB 3699, HB 3711, HB 3731, HB 3769, HB 3837, HB 3838, HB 3849, HB 3928, HB 4007, HB 4028, HB 4029, HB 4032, HB 4053, HB 4061, HB 4107, HB 4113, HB 4134, HCR 121, HCR 253, HCR 265, HCR 272, HCR 273, HJR 19

Senate List No. 51

SB 74, SB 131, SB 141, SB 363, SB 410, SB 560, SB 617, SB 649, SB 662, SB 714, SB 766, SB 919, SB 924, SB 962, SB 1091, SB 1092, SB 1185, SB 1207, SB 1231, SB 1233, SB 1234, SB 1245, SB 1339, SB 1391, SB 1535, SB 1566, SB 1613, SB 1624, SB 1658, SB 1719, SB 1724, SB 1729, SB 1788, SB 1912, SB 1942, SB 1972, SB 1984, SB 1993, SB 2020, SB 2031, SCR 58, SJR 65

MESSAGES FROM THE SENATE

The following messages from the senate were today received by the house:

Message No. 1

MESSAGE FROM THE SENATE
 SENATE CHAMBER
 Austin, Texas
 Sunday, May 27, 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 PASSED THE FOLLOWING MEASURES:

HCR 257

Corte, Frank

SPONSOR: Hinojosa

Honoring Texans who have died while serving in the Global War on Terrorism and all men and women who have served in the United States armed forces.

HCR 269 Homer SPONSOR: Eltife
In memory of Elizabeth Robertson Boatner of Mount Pleasant.

HCR 270 Homer SPONSOR: Eltife
In memory of Ashantay Renee Gray Bouchon of Paris.

HCR 280 Homer SPONSOR: Eltife
Honoring Dr. Charles Florio of Mt. Pleasant on his retirement as president of Northeast Texas Community College.

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 568 (30 Yeas, 0 Nays)

HB 1457 (30 Yeas, 0 Nays)

HB 1521 (30 Yeas, 0 Nays)

HB 1801 (30 Yeas, 0 Nays)

HB 1864 (30 Yeas, 0 Nays)

HB 2093 (30 Yeas, 0 Nays)

HB 3154 (30 Yeas, 0 Nays)

HB 3249 (30 Yeas, 0 Nays)

HB 3385 (30 Yeas, 0 Nays)

HB 3438 (30 Yeas, 0 Nays)

SB 23 (30 Yeas, 0 Nays)

SB 406 (30 Yeas, 0 Nays)

SB 765 (30 Yeas, 0 Nays)

SB 1951 (30 Yeas, 0 Nays)

Respectfully,
Patsy Spaw
Secretary of the Senate

Message No. 2

MESSAGE FROM THE SENATE
SENATE CHAMBER

Austin, Texas

Sunday, May 27, 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 ADOPTED THE FOLLOWING CONFERENCE
COMMITTEE REPORTS:

HB 610	(30 Yeas, 0 Nays)
HB 1113	(30 Yeas, 0 Nays)
HB 2072	(30 Yeas, 0 Nays)
HB 2667	(30 Yeas, 0 Nays)
HB 3200	(29 Yeas, 1 Nay)
HB 3275	(30 Yeas, 0 Nays)
HB 3314	(30 Yeas, 0 Nays)
HB 3315	(30 Yeas, 0 Nays)
HB 3609	(30 Yeas, 0 Nays)
HB 3674	(30 Yeas, 0 Nays)
SB 10	(30 Yeas, 0 Nays)
SB 1731	(30 Yeas, 0 Nays)
SB 1846	(29 Yeas, 1 Nay)

Respectfully,
Patsy Spaw
Secretary of the Senate

Message No. 3

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Sunday, May 27, 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 ADOPTED THE FOLLOWING CONFERENCE
COMMITTEE REPORTS:

HB 109	(29 Yeas, 1 Nay)
HB 447	(29 Yeas, 1 Nay)
HB 539	(30 Yeas, 0 Nays)
HB 892	(30 Yeas, 0 Nays)
HB 2094	(29 Yeas, 1 Nay)
HB 2833	(30 Yeas, 0 Nays)
HB 3319	(30 Yeas, 0 Nays)

HB 3382 (30 Yeas, 0 Nays)
SB 3 (29 Yeas, 1 Nay)
SB 9 (30 Yeas, 0 Nays)
SB 12 (30 Yeas, 0 Nays)
SB 101 (28 Yeas, 2 Nays)
SB 228 (30 Yeas, 0 Nays)
SB 718 (30 Yeas, 0 Nays)
SB 1119 (28 Yeas, 2 Nays)
SB 1871 (30 Yeas, 0 Nays)

Respectfully,
Patsy Spaw
Secretary of the Senate

Message No. 4

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Sunday, May 27, 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:

HB 2399 Delisi SPONSOR: Shapiro
Relating to teacher retention demonstration projects under the awards for student achievement program in public schools.

HCR 109 Herrero SPONSOR: Hinojosa
Recognizing Robstown, Texas, as the birthplace of the poker game Texas Hold'em.

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 828 (30 Yeas, 0 Nays)
HB 945 (30 Yeas, 0 Nays)
HB 1090 (27 Yeas, 3 Nays)
HB 1111 (30 Yeas, 0 Nays)
HB 1137 (30 Yeas, 0 Nays)
HB 1168 (30 Yeas, 0 Nays)
HB 1267 (30 Yeas, 0 Nays)

HB 1481	(30 Yeas, 0 Nays)
HB 1919	(22 Yeas, 8 Nays)
HB 2096	(30 Yeas, 0 Nays)
HB 2237	(29 Yeas, 1 Nay)
HB 2265	(24 Yeas, 6 Nays)
HB 2383	(30 Yeas, 0 Nays)
HB 2644	(30 Yeas, 0 Nays)
HB 2814	(28 Yeas, 2 Nays)
HB 3560	(30 Yeas, 0 Nays)
HB 3581	(30 Yeas, 0 Nays)
HB 3732	(15 Yeas, 13 Nays)
HB 3826	(30 Yeas, 0 Nays)
HB 3851	(30 Yeas, 0 Nays)
SB 6	(30 Yeas, 0 Nays)
SB 8	(27 Yeas, 3 Nays)
SB 11	(30 Yeas, 0 Nays)
SB 199	(30 Yeas, 0 Nays)
SB 482	(30 Yeas, 0 Nays)
SB 530	(28 Yeas, 2 Nays)
SB 758	(30 Yeas, 0 Nays)
SB 909	(30 Yeas, 0 Nays)
SB 1058	(30 Yeas, 0 Nays)
SB 1332	(30 Yeas, 0 Nays)
SB 1908	(28 Yeas, 1 Nay)

THE SENATE HAS DISCHARGED ITS CONFEREES AND CONCURRED
IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 1604	(30 Yeas, 0 Nays)
----------------	-------------------

Respectfully,
Patsy Spaw
Secretary of the Senate

ENROLLED

May 26 - HB 53, HB 147, HB 460, HB 550, HB 589, HB 1038, HB 1044, HB 1093, HB 1205, HB 1250, HB 1460, HB 1633, HB 1748, HB 1886, HB 1977, HB 2004, HB 2060, HB 2106, HB 2210, HB 2261, HB 2285, HB 2291, HB 2426, HB 2460, HB 2482, HB 2498, HB 2510, HB 2564, HB 2714, HB 2734, HB 2935, HB 2944, HB 3232, HB 3271, HB 3552, HB 3769, HB 4007, HB 4045, HB 4069, HB 4107, HB 4110, HCR 96, HCR 260

SENT TO THE GOVERNOR

May 26 - HB 47, HB 89, HB 142, HB 177, HB 199, HB 261, HB 278, HB 309, HB 335, HB 343, HB 373, HB 412, HB 431, HB 432, HB 433, HB 455, HB 485, HB 487, HB 541, HB 567, HB 573, HB 621, HB 649, HB 755, HB 831, HB 888, HB 916, HB 959, HB 964, HB 1022, HB 1034, HB 1121, HB 1158, HB 1166, HB 1183, HB 1212, HB 1241, HB 1254, HB 1275, HB 1297, HB 1352, HB 1370, HB 1374, HB 1381, HB 1385, HB 1411, HB 1427, HB 1456, HB 1471, HB 1493, HB 1500, HB 1545, HB 1573, HB 1587, HB 1614, HB 1687, HB 1728, HB 1737, HB 1747, HB 1759, HB 1795, HB 1815, HB 1841, HB 1847, HB 1849, HB 1915, HB 1920, HB 1921, HB 1995, HB 2002, HB 2070, HB 2077, HB 2087, HB 2091, HB 2092, HB 2101, HB 2103, HB 2112, HB 2115, HB 2117, HB 2151, HB 2174, HB 2218, HB 2256, HB 2267, HB 2283, HB 2352, HB 2353, HB 2358, HB 2368, HB 2385, HB 2442, HB 2445, HB 2484, HB 2540, HB 2549, HB 2551, HB 2569, HB 2608, HB 2617, HB 2627, HB 2639, HB 2646, HB 2651, HB 2654, HB 2660, HB 2694, HB 2761, HB 2766, HB 2984, HB 2990, HB 2991, HB 3008, HB 3011, HB 3017, HB 3024, HB 3038, HB 3070, HB 3093, HB 3098, HB 3114, HB 3131, HB 3147, HB 3171, HB 3182, HB 3195, HB 3210, HB 3211, HB 3225, HB 3236, HB 3261, HB 3266, HB 3270, HB 3273, HB 3290, HB 3291, HB 3295, HB 3300, HB 3352, HB 3353, HB 3355, HB 3367, HB 3392, HB 3407, HB 3435, HB 3439, HB 3457, HB 3470, HB 3485, HB 3495, HB 3502, HB 3558, HB 3593, HB 3619, HB 3647, HB 3659, HB 3688, HB 3723, HB 3735, HB 3736, HB 3764, HB 3770, HB 3787, HB 3832, HB 3834, HB 3934, HB 3954, HB 3979, HB 3980, HB 3982, HB 3988, HB 3989, HB 3991, HB 3992, HB 3993, HB 3997, HB 3998, HB 4004, HB 4006, HB 4008, HB 4009, HB 4010, HB 4017, HB 4018, HB 4019, HB 4022, HB 4024, HB 4085, HCR 208, HCR 209, HCR 218, HCR 221, HCR 228, HCR 231, HCR 232, HCR 234, HCR 242, HCR 244, HCR 245, HCR 250, HCR 251, HCR 262, HCR 264

VETOED BY THE GOVERNOR

May 26 - HCR 30

