

EIGHTY-FIRST DAY

SATURDAY, MAY 28, 2005

PROCEEDINGS

The Senate met at 12:00 noon pursuant to adjournment and was called to order by Senator Carona.

The roll was called and the following Senators were present: Armbrister, Averitt, Barrientos, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Staples, Van de Putte, Wentworth, West, Whitmire, Williams, Zaffirini.

The Presiding Officer announced that a quorum of the Senate was present.

The Reverend Keith Born, Immanuel Lutheran Church, Pflugerville, offered the invocation as follows:

Dear Lord, gathered again are folks from all over this State of Texas, and they are gathered to be about the business of serving the people of our state. Keep them mindful of their responsibility, give them insight in their deliberations, and sustain them in their task. I ask this in Your most holy name. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of yesterday be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 28, 2005

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 218, In memory of Frank Elder, assistant chief of the Driver License Division of DPS.

THE HOUSE HAS GRANTED THE REQUEST OF THE SENATE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

SB 52 (non-record vote)

House Conferees: Hupp - Chair/Davis, John/Eissler/Naishtat/Reyna

SB 444 (non-record vote)

House Conferees: Hopson - Chair/Elkins/Hughes/Ritter/Vo

SB 567 (non-record vote)

House Conferees: Keffer, Jim - Chair/Edwards/King, Phil/Paxton/Ritter

SB 825 (non-record vote)

House Conferees: Solomons - Chair/Brown, Fred/Otto/Pickett/Uresti

SB 872 (non-record vote)

House Conferees: Delisi - Chair/Coleman/Dawson/McReynolds/Truitt

SB 882 (non-record vote)

House Conferees: Allen, Alma - Chair/Davis, John/Hupp/Naishtat/Reyna

SB 1188 (non-record vote)

House Conferees: Delisi - Chair/Coleman/Dawson/McReynolds/Truitt

SB 1227 (non-record vote)

House Conferees: Morrison - Chair/Branch/Harper-Brown/Jones, Jesse/Rose

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

SB 1103 (145 Yeas, 0 Nays)

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

BILLS SIGNED

The Presiding Officer announced the signing of the following enrolled bills in the presence of the Senate after the captions had been read:

SB 18, SB 66, SB 96, SB 188, SB 213, SB 254, SB 256, SB 263, SB 270, SB 302, SB 325, SB 338, SB 387, SB 425, SB 428, SB 429, SB 442, SB 450, SB 452, SB 493, SB 521, SB 621, SB 626, SB 691, SB 727, SB 729, SB 737, SB 742, SB 760, SB 776, SB 784, SB 967, SB 984, SB 986, SB 998, SB 1002, SB 1045, SB 1090, SB 1105, SB 1106, SB 1108, SB 1238, SB 1247, SB 1284, SB 1345, SB 1351, SB 1408, SB 1440, SB 1448, SB 1455, SB 1461, SB 1479, SB 1491, SB 1524, SB 1564, SB 1569, SB 1693, SB 1795, SB 1840, SB 1888.

CONFERENCE COMMITTEE ON HOUSE BILL 10

Senator Averitt, on behalf of Senator Ogden, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 10** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 10** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Ogden, Chair; Duncan, Averitt, Zaffirini, and Whitmire.

CONFERENCE COMMITTEE ON HOUSE BILL 880

Senator Zaffirini called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 880** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 880** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Zaffirini, Chair; Barrientos, Deuell, Janek, and Nelson.

CONFERENCE COMMITTEE ON HOUSE BILL 2335

Senator Shapleigh called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2335** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2335** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Shapleigh, Chair; Van de Putte, Fraser, Seliger, and Hinojosa.

CONFERENCE COMMITTEE ON HOUSE BILL 1068

Senator Hinojosa called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1068** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1068** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Hinojosa, Chair; Whitmire, Seliger, Harris, and Eltife.

CONFERENCE COMMITTEE ON HOUSE BILL 3556

Senator Deuell called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3556** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3556** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Deuell, Chair; Lindsay, Madla, Seliger, and Gallegos.

CONFERENCE COMMITTEE ON HOUSE BILL 3518

Senator Ellis called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3518** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3518** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Ellis, Chair; Madla, Wentworth, Lindsay, and Whitmire.

CONFERENCE COMMITTEE ON HOUSE BILL 925

Senator Lucio called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 925** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer, Senator Carona in Chair, asked if there were any motions to instruct the conference committee on **HB 925** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Lucio, Chair; Estes, Shapleigh, Seliger, and Zaffirini.

CONFERENCE COMMITTEE ON HOUSE BILL 1800

Senator Harris called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1800** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1800** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Harris, Chair; Brimer, Eltife, Van de Putte, and Armbrister.

CONFERENCE COMMITTEE ON HOUSE BILL 183

Senator Zaffirini called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 183** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 183** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Zaffirini, Chair; Staples, Barrientos, Wentworth, and Van de Putte.

CONFERENCE COMMITTEE ON HOUSE BILL 2145

Senator Deuell called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2145** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2145** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Deuell, Chair; Janek, Nelson, Van de Putte, and Eltife.

CONFERENCE COMMITTEE ON HOUSE BILL 1116

Senator Nelson called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1116** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1116** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Nelson, Chair; Carona, Jackson, Whitmire, and Harris.

CONFERENCE COMMITTEE ON HOUSE BILL 2161

Senator Seliger called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2161** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2161** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Seliger, Chair; Armbrister, Averitt, Deuell, and Estes.

CONFERENCE COMMITTEE ON HOUSE BILL 1357

Senator Seliger called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1357** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1357** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Seliger, Chair; Ellis, Hinojosa, Lindsay, and Williams.

CONFERENCE COMMITTEE ON HOUSE BILL 2572

Senator Janek called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2572** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2572** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Janek, Chair; Armbrister, Eltife, Deuell, and Lucio.

CONFERENCE COMMITTEE ON HOUSE BILL 2928

Senator Seliger called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2928** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2928** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Seliger, Chair; Eltife, Fraser, Carona, and West.

CONFERENCE COMMITTEE ON HOUSE BILL 2959

Senator Zaffirini called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2959** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2959** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Zaffirini, Chair; Averitt, Eltife, Fraser, and Lucio.

CONFERENCE COMMITTEE ON HOUSE BILL 2201

Senator Estes called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2201** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2201** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Estes, Chair; Fraser, Seliger, Eltife, and Jackson.

CONFERENCE COMMITTEE ON HOUSE BILL 3001

Senator Williams, on behalf of Senator Duncan, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3001** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer, Senator Carona in Chair, asked if there were any motions to instruct the conference committee on **HB 3001** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Duncan, Chair; Ogden, Averitt, Ellis, and Nelson.

CONFERENCE COMMITTEE ON HOUSE BILL 1772

Senator Williams, on behalf of Senator Fraser, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1772** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1772** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Fraser, Chair; Brimer, Madla, Armbrister, and Wentworth.

CONFERENCE COMMITTEE ON HOUSE JOINT RESOLUTION 80

Senator Williams, on behalf of Senator Ogden, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HJR 80** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HJR 80** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Ogden, Chair; Williams, Carona, Estes, and Madla.

CONFERENCE COMMITTEE ON HOUSE BILL 1449

Senator Harris called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1449** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1449** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Harris, Chair; Wentworth, Van de Putte, Brimer, and Madla.

CONFERENCE COMMITTEE ON HOUSE BILL 3333

Senator Madla called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3333** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3333** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Madla, Chair; Deuell, Brimer, Shapleigh, and Duncan.

CONFERENCE COMMITTEE ON HOUSE BILL 1188

Senator Shapleigh, on behalf of Senator West, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1188** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1188** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators West, Chair; Eltife, Deuell, Brimer, and Madla.

CONFERENCE COMMITTEE ON HOUSE BILL 2221

Senator Shapleigh, on behalf of Senator West, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2221** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2221** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators West, Chair; Carona, Hinojosa, Shapiro, and Williams.

SENATE BILL 526 WITH HOUSE AMENDMENT

Senator Hinojosa called **SB 526** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer, Senator Carona in Chair, laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **SB 526** (House committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION __. Article 102.005, Code of Criminal Procedure, is amended by amending Subsection (f) and adding Subsections (g) and (h) to read as follows:

(f) A defendant convicted of an offense in a county court, a county court at law, or a district court shall pay a fee of \$25 ~~[\$20]~~ for records management and preservation services performed by the county as required by Chapter 203, Local Government Code. The fee shall be collected and distributed by the clerk of the court to the county treasurer, or to an official who discharges the duties commonly delegated to the county treasurer, for deposit as follows:

(1) \$22.50 to the county records management and preservation fund for records management and preservation, including automation, in various county offices; and

(2) \$2.50 to the records management and preservation fund of the clerk of the court for records management and preservation services performed by the clerk of the court ~~[in the same manner as fees are collected and distributed under Section 51.317(e), Government Code. The fee received by a county shall be placed in a special fund to be called the records management and preservation fund. The fee shall be used only for records management and preservation purposes in the county as required by Chapter 203, Local Government Code. No expenditures may be made from this fund without prior approval of the commissioners court].~~

(g) A fee deposited in accordance with Subsection (f) may be used only to provide funds for specific records management and preservation, including for automation purposes, on approval by the commissioners court of a budget as provided by Chapter 111, Local Government Code.

(h) An expenditure from a records management and preservation fund must comply with Subchapter C, Chapter 262, Local Government Code.

SECTION __. Section 51.317(c), Government Code, is amended to read as follows:

(c) The district clerk, after collecting a fee under Subsection (b)(4), shall pay the fee to the county treasurer, or to an official who discharges the duties commonly delegated to the county treasurer, for deposit as follows:

(1) \$5 to the county records management and preservation fund for records management and preservation, including automation, in various county offices; and

(2) \$5 to the district clerk records management and preservation fund for records management and preservation services performed by the district clerk when ~~[after]~~ a case or document is filed in the records office of the district clerk.

SECTION __. Section 102.041, Government Code, is amended to read as follows:

Sec. 102.041. ADDITIONAL COURT COSTS ON CONVICTION IN DISTRICT COURT. The clerk of a district court shall collect fees and costs on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;
- (2) a fee for clerk of the court services (Art. 102.005, Code of Criminal Procedure) . . . \$40;
- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25 [~~\$20~~];
- (4) a security fee on a felony offense (Art. 102.017, Code of Criminal Procedure) . . . \$5;
- (5) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (6) a graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$5; and
- (7) a court cost on conviction in Comal County (Sec. 152.0522, Human Resources Code) . . . \$4.

SECTION __. Section 102.061, Government Code, is amended to read as follows:

Sec. 102.061. ADDITIONAL COURT COSTS ON CONVICTION IN STATUTORY COUNTY COURT. The clerk of a statutory county court shall collect fees and costs on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;
- (2) a fee for services of the clerk of the court (Art. 102.005, Code of Criminal Procedure) . . . \$40;
- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25 [~~\$20~~];
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$5; and
- (6) a court cost on conviction in Comal County (Sec. 152.0522, Human Resources Code) . . . \$4.

SECTION __. Section 102.081, Government Code, is amended to read as follows:

Sec. 102.081. ADDITIONAL COURT COSTS ON CONVICTION IN COUNTY COURT. The clerk of a county court shall collect fees and costs on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;
- (2) a fee for clerk of the court services (Art. 102.005, Code of Criminal Procedure) . . . \$40;
- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25 [~~\$20~~];
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3; and

(5) a graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$5.

SECTION __. The changes in law made by this Act apply only to a fee that becomes payable on or after the effective date of this Act. A fee that became payable before the effective date of this Act is governed by the law in effect when the fee became payable, and that law is continued in effect for that purpose.

The amendment was read.

Senator Hinojosa moved to concur in the House amendment to **SB 526**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE ON HOUSE BILL 1126

Senator Madla called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1126** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1126** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Madla, Chair; Gallegos, Nelson, Lucio, and Janek.

CONFERENCE COMMITTEE ON HOUSE BILL 3563

Senator Staples called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3563** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3563** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Staples, Chair; Averitt, Fraser, Hinojosa, and Eltife.

SENATE BILL 1131 WITH HOUSE AMENDMENTS

Senator Hinojosa called **SB 1131** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment No. 1

Amend **SB 1131** as follows:

- (1) On page 3, line 1, strike "and".
- (2) On page 3, line 6, strike the period and substitute:

; and

(3) a majority of the voters in the municipality in which the ferry is located, voting in an election held for that purpose, approve the conveyance.

(3) On page 4, between lines 21 and 22, insert the following:

(j) The governing body of the municipality in which the ferry is located shall order an election held on the approval of a conveyance under this section.

Floor Amendment No. 2

Amend **SB 1131** (House committee report) by adding the following SECTIONS to the bill and renumbering subsequent SECTIONS as appropriate:

SECTION __. Subchapter B, Chapter 370, Transportation Code, is amended by adding Section 370.0311 to read as follows:

Sec. 370.0311. CERTAIN MUNICIPALITIES. (a) This section applies to a municipality:

(1) with a population of 5,000 or less; and

(2) in which a ferry system that is a part of the state highway system is located.

(b) A municipality has the same authority as a county under this chapter to create and participate in an authority.

(c) A municipality that creates or participates in an authority has the same powers and duties as a county that creates or participates in an authority under this chapter.

(d) The governing body of a municipality that creates or participates in an authority has the same powers and duties as a commissioners court of a county that creates or participates in an authority under this chapter.

(e) An elected member of the governing body of a municipality that creates or participates in an authority has the same powers and duties as a commissioner of a county that creates or participates in an authority under this chapter.

SECTION __. Section 370.037(h), Transportation Code, is amended to read as follows:

(h) An authority may permanently ~~temporarily~~ charge a toll for use of a ferry transferred under this section ~~[to pay the costs necessary for an expansion of the ferry. An authority may permanently charge a toll for use of ferry facilities that are an expansion of the ferry transferred under this section].~~ An authority may permanently charge a fee or toll for priority use of ferry facilities under Section 370.193.

SECTION __. Subchapter E, Chapter 370, Transportation Code, is amended by adding Section 370.193 to read as follows:

Sec. 370.193. PRIORITY BOARDING OF FERRY. An authority may establish a system under which an owner of a motor vehicle may pay an additional fee or toll that entitles the vehicle to have priority in boarding a ferry operated by the authority.

The amendments were read.

Senator Hinojosa moved to concur in the House amendments to **SB 1131**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 1831 WITH HOUSE AMENDMENT

Senator Hinojosa called **SB 1831** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 1831** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the creation of the Corpus Christi Aquifer Storage and Recovery Conservation District.

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

SECTION 1. Subtitle H, Title 6, Special District Local Laws Code, is amended by adding Chapter 8811 to read as follows:

CHAPTER 8811. CORPUS CHRISTI AQUIFER STORAGE AND
RECOVERY CONSERVATION DISTRICT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8811.001. DEFINITIONS. In this chapter:

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

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

(3) "District" means the Corpus Christi Aquifer Storage and Recovery Conservation District.

Sec. 8811.002. NATURE OF DISTRICT. The district is a conservation and reclamation district in Kleberg, Nueces, and San Patricio Counties created under and essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution. The district is created to develop and protect municipal aquifer storage areas created by the City of Corpus Christi.

Sec. 8811.003. CONFIRMATION ELECTION NOT REQUIRED. An election to confirm the creation of the district is not required.

Sec. 8811.004. INITIAL DISTRICT TERRITORY. The initial boundaries of the district are coextensive with the city limits of the City of Corpus Christi and include:

(1) property owned by or under contract to the City of Corpus Christi in Nueces and Kleberg Counties; and

(2) in San Patricio County, property owned by or under contract to the City of Corpus Christi and bounded on the west by Interstate Highway 37 and U.S. Highway 77, on the north by the metropolitan planning organization boundary, on the east by County Road 2849, and on the south by the city limits of the City of Corpus Christi.

Sec. 8811.005. APPLICABILITY OF OTHER LAW. Except as otherwise provided by this chapter, Chapter 36, Water Code, applies to the district.

Sec. 8811.006. CREATION OF GROUNDWATER CONSERVATION DISTRICTS IN SAN PATRICIO COUNTY. (a) This chapter does not preclude the creation of a groundwater conservation district in San Patricio County.

(b) A groundwater conservation district created in San Patricio County may not limit or restrict the district from recovering water stored by the district in a municipal aquifer storage area in the district, even if the municipal aquifer storage area is also located in the groundwater conservation district.

(c) To the extent that the boundaries of the district and a groundwater conservation district in San Patricio County overlap, the power and authority of the two districts are joint and coextensive.

(d) The district and land in the district are exempt from taxes and fees imposed by a groundwater conservation district created in San Patricio County.

[Sections 8811.007-8811.020 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8811.021. DIRECTORS; TERMS. (a) The district is governed by a board of five directors.

(b) Except as provided by Subsection (c), directors serve staggered four-year terms.

(c) The initial directors shall draw lots to determine which three directors shall serve four-year terms that expire at the end of the calendar year four years after the effective date of the Act creating this chapter, and which two directors shall serve two-year terms that expire at the end of the calendar year two years after the effective date of the Act creating this chapter.

Sec. 8811.022. APPOINTMENT OF DIRECTORS. The Corpus Christi City Council shall appoint the directors.

Sec. 8811.023. VACANCY. If a vacancy occurs on the board, the board may appoint a director to serve the remainder of the term.

Sec. 8811.024. OFFICERS. The board shall annually elect officers. The officers must be confirmed by the Corpus Christi City Council.

[Sections 8811.025-8811.050 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8811.051. AQUIFER STORAGE AND RECOVERY PROJECTS. The district may implement and develop aquifer storage and recovery projects.

Sec. 8811.052. MUNICIPAL AQUIFER STORAGE AREAS IN SAN PATRICIO COUNTY. The district may not allow more water to be recovered from a municipal aquifer storage area in San Patricio County than the amount of water stored by the district at the municipal aquifer storage area.

Sec. 8811.053. TAXES AND BONDS PROHIBITED. The district may not impose a tax or issue bonds.

Sec. 8811.054. EMINENT DOMAIN. The district may not exercise the power of eminent domain.

SECTION 2. (a) The legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor has submitted the notice and Act to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

The amendment was read.

Senator Hinojosa moved to concur in the House amendment to **SB 1831**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE ON HOUSE BILL 2027

Senator Eltife, on behalf of Senator Armbrister, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2027** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2027** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Armbrister, Chair; Jackson, Lucio, Fraser, and Harris.

CONFERENCE COMMITTEE ON HOUSE BILL 2876

Senator Eltife, on behalf of Senator Armbrister, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2876** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2876** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Armbrister, Chair; Madla, Duncan, Estes, and Lindsay.

CONFERENCE COMMITTEE ON HOUSE BILL 3482

Senator Eltife, on behalf of Senator Armbrister, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3482** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3482** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Armbrister, Chair; Jackson, Madla, Fraser, and Seliger.

(Senator Williams in Chair)

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
May 28, 2005

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 182 (non-record vote)

HB 836 (non-record vote)

HB 905 (144 Yeas, 0 Nays, 1 Present, not voting)

HB 1048 (non-record vote)

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE BILL 1892 WITH HOUSE AMENDMENTS

Senator Madla called **SB 1892** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 1892** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the creation of the Espada Development District; providing authority to impose taxes and issue bonds.

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

SECTION 1. Subtitle C, Title 4, Special District Local Laws Code, is amended by adding Chapter 3833 to read as follows:

CHAPTER 3833. ESPADA DEVELOPMENT DISTRICT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 3833.001. DEFINITIONS. In this chapter:

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

(2) "Bond" means any type of interest-bearing obligation, including a bond, note, bond anticipation note, certificate of participation, or other similar evidence of indebtedness.

(3) "City" means the City of San Antonio.

(4) "District" means the Espada Development District.

Sec. 3833.002. ESPADA DEVELOPMENT DISTRICT. The Espada Development District is a special district created under Sections 52 and 52-a, Article III, Section 1-g, Article VIII, and Section 59, Article XVI, Texas Constitution.

Sec. 3833.003. MUNICIPAL CONSENT REQUIRED; CONDITIONS. (a) Unless the governing body of the city by resolution consents to the creation of the district before January 1, 2007:

(1) the board may not hold an election to confirm the creation of the district and to elect directors under Section 3833.024;

(2) the district is dissolved on that date; and

(3) this chapter expires September 1, 2008.

(b) The governing body of the city by resolution may consent or withhold consent to the creation of the district and the governing body's consent may be conditional, as expressly provided by the resolution. The governing body may include as a condition to its consent a requirement that certain territory be added to or excluded from the district before the confirmation election.

Sec. 3833.004. CONFIRMATION ELECTION REQUIRED. If the creation of the district is not confirmed at a confirmation election held under Section 3833.024 before September 1, 2009:

(1) the district is dissolved September 1, 2009, except that:

(A) the district shall pay any debts incurred;

(B) the district shall transfer any assets that remain after the payment of debts to the city; and

(C) the organization of the district is maintained until all debts are paid and remaining assets are transferred; and

(2) this chapter expires September 1, 2012.

Sec. 3833.005. PURPOSE; DECLARATION OF INTENT. (a) The creation of the district is essential to accomplish the purposes of Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other public purposes stated in this chapter.

(b) The creation of the district is necessary to develop, encourage, and maintain employment, commerce, economic development, and the public welfare of residents, employers, employees, and consumers in the district and adjacent areas.

(c) Except as provided by this chapter, the creation of the district may not be interpreted to relieve the city from providing services to the area of the district. The district is created to supplement and not to supplant the city services provided in the area of the district.

Sec. 3833.006. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) The district is created to serve a public use and benefit.

(b) The creation of the district is in the public interest and is essential to:

(1) further the public purposes of developing and diversifying the economy of the state;

(2) eliminate unemployment and underemployment; and

(3) develop or expand transportation and commerce.

(c) The district will provide needed funding for the district to maintain and enhance the economic health and vitality of the district territory as a community and business center.

(d) The district may not act as the agent or instrumentality of any private interest even though the district will benefit many private interests as well as the public.

Sec. 3833.007. DISTRICT TERRITORY. (a) The district is composed of the territory described by Section 2 of the Act enacting this chapter, as that territory may have been modified to meet a condition of the city's resolution consenting to the district's creation.

(b) The boundaries and field notes contained in Section 2 of the Act creating this chapter form a closure. A mistake made in the field notes or in copying the field notes in the legislative process does not affect the district's:

(1) organization, existence, or validity;

(2) right to impose taxes;

(3) right to issue or pay bonds; or

(4) legality or operation.

(c) After the confirmation election, the district may not add or exclude territory from the district.

Sec. 3833.008. COMPLIANCE WITH MUNICIPAL CONSENT RESOLUTIONS. The district shall comply with all terms and conditions of any resolution adopted by the governing body of the city that consents to the creation of the district or to the inclusion or exclusion of territory in the district.

Sec. 3833.009. APPLICABILITY OF OTHER WATER DISTRICTS LAW. Except as otherwise provided by this chapter, Chapter 49, Water Code, does not apply to the district.

Sec. 3833.010. LIBERAL CONSTRUCTION OF CHAPTER. This chapter shall be liberally construed in conformity with the findings and purposes stated in this chapter.

[Sections 3833.011-3833.020 reserved for expansion]

SUBCHAPTER A1. TEMPORARY PROVISIONS

Sec. 3833.021. INITIAL DIRECTORS. (a) If the governing body of the city consents to the creation of the district under Section 3833.003, the governing body shall appoint a board of five initial voting directors.

(b) The governing body of the city shall appoint the initial directors with:

(1) two initial directors' terms expiring on June 1, 2008; and

(2) three directors' terms expiring on June 1, 2010.

(c) This section expires September 1, 2011.

Sec. 3833.022. ORGANIZATIONAL MEETING OF INITIAL DIRECTORS.

As soon as practicable after the appointment of all the initial directors, the initial directors shall meet at a location in the district agreeable to a majority of the directors. At the meeting, the initial directors shall elect officers from among the initial directors and conduct any other district business.

Sec. 3833.023. CHANGE IN DISTRICT TERRITORY BEFORE CONFIRMATION ELECTION. (a) Except as provided by Subsection (b), Section 49.315, Water Code, applies to the district.

(b) The governing body of the city must approve by resolution the addition or exclusion of any territory in the district. The governing body may include conditions in the resolution, including a condition that certain territory be added to or excluded from the district.

Sec. 3833.024. CONFIRMATION ELECTION. (a) The initial board shall hold an election to confirm the district's creation.

(b) The ballots for a confirmation election must provide for voting "For District" and "Against District."

(c) If a majority of the votes cast in the election favor the creation of the district, then the initial board shall declare that the district is created and enter the result in its minutes. If less than a majority of the votes cast in the election are against the creation of the district, the initial board shall declare that the district was defeated and enter the result in its minutes. The board shall file a copy of the order with the governing body of the city.

(d) The order canvassing the results of the confirmation election must contain a description of the district's boundaries. The initial board shall file the order in the district's records and in the deed records of the county or counties in which the district is located.

Sec. 3833.025. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2012.

[Sections 3833.026-3833.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 3833.051. BOARD OF DIRECTORS; TERMS. The district is governed by a board of five directors who serve staggered four-year terms, with two or three directors' terms expiring June 1 of each even-numbered year.

Sec. 3833.052. QUALIFICATIONS. (a) To be qualified to serve as a director, a person must be at least 18 years of age and be eligible to vote in the:

(1) city, if fewer than 1,000 individuals reside in the district; or

(2) district, if 1,000 or more individuals reside in the district.

(b) A change in the number of individuals who reside in the district does not affect a director's entitlement to serve out the remainder of the director's term.

Sec. 3833.053. APPOINTMENT OF DIRECTORS. The governing body of the city shall appoint the district's directors.

Sec. 3833.054. NONVOTING DIRECTORS. (a) The following persons serve as nonvoting directors:

(1) the directors of the following departments of the city or a person designated by that director:

(A) finance; and

(B) public works; and

(2) the city manager of the city or a person designated by the city manager.

(b) If a department described by Subsection (a) is consolidated, renamed, or changed, the board may appoint a director of the consolidated, renamed, or changed department as a nonvoting director. If a department described by Subsection (a) is abolished, the board may appoint a representative of another department that performs duties comparable to those performed by the abolished department.

Sec. 3833.055. QUORUM. Nonvoting directors are not counted for purposes of determining whether a quorum is present.

Sec. 3833.056. VACANCY. A vacancy on the board is filled for the remainder of the unexpired term in the same manner as the original appointment.

Sec. 3833.057. GENERAL VOTING REQUIREMENTS. Except as provided by Section 3833.251, three directors must approve any official district action.

Sec. 3833.058. COMPENSATION. A director is not entitled to compensation for service on the board but is entitled to reimbursement for necessary and reasonable expenses incurred in carrying out the duties and responsibilities of a director.

Sec. 3833.059. REMOVAL OF DIRECTORS. A board majority may petition the city's governing body to remove a director for misconduct or failure to carry out the director's duties. The governing body, after notice and hearing, may remove the director for the misconduct or failure.

Sec. 3833.060. APPLICABILITY OF OTHER WATER DISTRICTS LAW. Subchapter C, Chapter 49, Water Code, applies to the district, except for Sections 49.053, 49.055, and 49.060.

[Sections 3833.061-3833.100 reserved for expansion]

SUBCHAPTER C. PUBLIC IMPROVEMENTS

Sec. 3833.101. GENERAL IMPROVEMENTS POWERS; LIMIT. (a) The district has all powers necessary to acquire, construct, and maintain improvements specified by this subchapter.

(b) The district may not exercise a power granted by this subchapter outside the district's boundaries.

Sec. 3833.102. WATER-RELATED IMPROVEMENTS. The district may acquire, construct, or maintain stormwater, drainage and detention facilities, sanitary sewer lines and pump stations, and water lines and pump stations.

Sec. 3833.103. ROAD-RELATED IMPROVEMENTS; REIMBURSEMENT TO PRIVATE PARTY. (a) The district may acquire, construct, or maintain streets and alleys, including sidewalks, streetscapes, street signs, traffic signals, and street lights.

(b) For construction that occurs after the district's creation, the district may reimburse a private person for money spent to construct a road or related improvement that will be transferred under Subchapter D or to purchase a road or improvement constructed by the private person.

Sec. 3833.104. TRANSIT FACILITIES. The district may acquire, construct, or maintain transit facilities.

Sec. 3833.105. PUBLIC PARKING FACILITIES. The district may acquire, construct, or maintain public parking facilities.

Sec. 3833.106. PUBLIC ART. The district may acquire, construct, or maintain public art.

Sec. 3833.107. PARKS AND OPEN SPACES. The district may acquire, construct, or maintain parks and open spaces.

Sec. 3833.108. PEDESTRIAN LINKAGES. The district may acquire, construct, or maintain pedestrian linkages.

Sec. 3833.109. LIBRARY, POLICE STATION, FIRE STATION; CITY CONSENT REQUIRED. After obtaining the city's consent by resolution, the district may acquire, construct, and maintain a library, police station, or a fire station.

Sec. 3833.110. GAS AND ELECTRIC TRANSMISSION LINES. The district may acquire, construct, or maintain gas or electric transmission lines and related appurtenances.

Sec. 3833.111. CITY CONSENT REQUIRED FOR CERTAIN ROADS AND CITY PROPERTY. Before the district begins a project that involves the use of the rights-of-way of streets, roads, or highways or the use of municipal land or any easements granted by the city, the district must obtain the approval of the city's governing body in the form of a resolution approving the plans and specifications of the project, including a substantial alteration to a plan or specification.

Sec. 3833.112. APPLICATION OF INTERLOCAL COOPERATION ACT. For purposes of Chapter 791, Government Code, the implementation of an improvement under this subchapter is a governmental function or service.

Sec. 3833.113. ACQUISITION OF CERTAIN ENCUMBERED PROPERTY PROHIBITED. The district may not acquire an improvement under this subchapter that has a lien on it or is otherwise encumbered.

[Sections 3833.114-3833.150 reserved for expansion]

SUBCHAPTER D. TRANSFER OF PUBLIC IMPROVEMENTS

Sec. 3833.151. TRANSFER OF CERTAIN IMPROVEMENTS REQUIRED.

(a) Subject to Section 3833.155, the district shall transfer an improvement as provided by this section when the district acquires or completes the improvement and the receiving entity approves the transfer.

(b) The district shall transfer a:

(1) water line or system, including a pump station or other ancillary improvement, that is located in a portion of the district that is in the certificated service area of the:

(A) San Antonio Water System, to that system; and

(B) Bexar Metropolitan Water District, to that district;

(2) wastewater line or system, including a pump station or other ancillary improvement, to the San Antonio Water System;

- (3) library, police station, or fire station to the city;
- (4) stormwater, drainage, or detention line or detention facility, to the city;
- (5) road, alley, or street, to the city;
- (6) sidewalk, to the city;
- (7) streetscape, to the city;
- (8) street light, to the city;
- (9) street sign, to the city;
- (10) traffic signal, to the city;
- (11) pedestrian linkage, to the city; and
- (12) gas or electric transmission lines and related appurtenances to City

Public Service.

(c) The district is not required to transfer an improvement described by Subsections (b)(4)-(12) if the district and city enter into a written agreement that the transfer is not required. The district and the city may agree on other terms under this subsection.

Sec. 3833.152. CONSTRUCTION STANDARDS. A public improvement required to be transferred under this subchapter must be constructed in compliance with the requirements and specifications established by the appropriate receiving entity at the time construction of the improvement begins.

Sec. 3833.153. OPTIONAL TRANSFER FOR CERTAIN IMPROVEMENTS.

(a) The district may retain bus terminals or may transfer the bus terminals to the VIA Metropolitan Transit Authority or any successor regional transportation authority or district with the agreement of the authority.

(b) The district may retain public parking areas, parks and open space improvements and public art, or may transfer these to the city with the agreement of the city.

Sec. 3833.154. PARTIAL TRANSFER IN STAGES. The district may transfer part of an improvement as provided by this subchapter if the district constructs the improvement in stages.

Sec. 3833.155. TRANSFER WITHOUT DEBT REQUIRED. The district shall convey all improvements that it is required to transfer under this subchapter without debt or other encumbrance.

Sec. 3833.156. OWNERSHIP AND RESPONSIBILITY AFTER TRANSFER.

(a) After a transfer under this subchapter, the receiving entity owns the improvement and has sole jurisdiction and control over the improvement. On acceptance of the transfer, the receiving entity is responsible for all maintenance of the public improvement and the district is not responsible for the public improvement or its maintenance.

(b) This section does not affect any authority of the receiving entity to alter, relocate, close, or discontinue maintenance of an improvement.

Sec. 3833.157. CONTRACT WITH DISTRICT TO MAINTAIN IMPROVEMENT AFTER TRANSFER. The district may contract with the receiving entity to provide a higher level of maintenance to an improvement transferred under this subchapter. The district shall pay the receiving entity for the higher level of maintenance.

Sec. 3833.158. EFFECT OF CONVEYANCE ON DISTRICT DEBT. Conveyance of a public improvement to the appropriate entity under this subchapter does not affect:

(1) the sole responsibility of the district to pay in full the principal of and interest and any premium on any outstanding district bonds or other debt; or

(2) the district's responsibility to perform the obligations provided by the orders or resolutions authorizing the bonds or other debt.

[Sections 3833.159-3833.200 reserved for expansion]

SUBCHAPTER E. OTHER GENERAL POWERS AND DUTIES

Sec. 3833.201. CONTRACTS. In addition to the powers granted by Section 49.057, Water Code, the district may contract with any person for any district purpose, including governmental entities, under terms and conditions the board considers advisable.

Sec. 3833.202. CONTRACT ELECTIONS. Section 49.108, Water Code, applies to the district.

Sec. 3833.203. GRANTS; LOANS. The district may accept a grant or loan from any person for any district purpose.

Sec. 3833.204. PROPERTY. The district may acquire or dispose of any property right in any manner necessary, convenient, or useful to exercise a district power.

Sec. 3833.205. SURPLUS PROPERTY. (a) The district may sell, lease, or otherwise dispose of any property right that is not necessary for or, if the property right is a lease, that is inconsistent with the efficient operation and maintenance of the district's improvements.

(b) The district may sell, lease, or otherwise dispose of any surplus property that is not necessary to implement a district purpose.

Sec. 3833.206. RECREATIONAL FACILITIES. In addition to the district's powers under Section 3833.106 or 3833.107, Subchapter N, Chapter 49, Water Code, applies to the district.

Sec. 3833.207. HEARINGS. The district may conduct hearings and take testimony and proof, under oath or affirmation, at public hearings, on any matter necessary to implement a district purpose.

Sec. 3833.208. NOTICES, REPORTS, AND BANKRUPTCY. (a) Except as provided by Subsection (b), Subchapter M, Chapter 49, Water Code, applies to the district.

(b) Section 49.454, Water Code, does not apply to the district.

Sec. 3833.209. ANNEXATION OF DEVELOPER'S PROPERTY; TAX INCREMENT REINVESTMENT ZONE; SERVICES. (a) In this section, "developer" means a person who owns a tract of land in the district and who has divided or proposes to divide the tract into two or more parts to lay out a subdivision of the tract, including an addition to a municipality, or to lay out suburban, building, or other lots, and to lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts.

(b) The developer may petition the city to annex the developer's property in the district and for the formation of a tax increment reinvestment zone in the annexed property under Chapter 311, Tax Code.

(c) The developer and the city may negotiate the terms and levels of services to be provided in the annexed area based on the developer's projected development plan. The plan may provide that one or more city services is not required unless and until the property actually develops sufficiently to justify the service.

(d) In negotiating an agreement for services under this section, the parties may agree to:

(1) any term allowed under Section 42.044 or 43.0751, Local Government Code, regardless of whether the city or the area proposed for annexation would have otherwise been able to agree to the term under those sections; and

(2) any other provision to which both parties agree to satisfactorily resolve any dispute between the parties.

(e) The terms and conditions of the negotiated service plan bind the city for the period provided by Section 43.056(l), Local Government Code, and the developer, the developer's heirs, successors, and assigns, and any person taking title to all or a portion of the property annexed under the annexation petition for that period.

(f) The developer and the city may amend the negotiated service plan. An amendment binds only the property owned or controlled by the developer at the time of the approval of the amendment by the developer and the city.

(g) The developer and the city shall forward the negotiated service plan and any later amendments to the board.

Sec. 3833.210. PROHIBITION ON UTILITY SERVICES. The district may not provide electric, gas, water, sewer, drainage, or flood control services to residential, retail, or commercial customers in or outside the district.

Sec. 3833.211. USE AND ALTERATION OF PUBLIC WAYS. (a) The district may not change, alter, or damage the property, including facilities, of the state or any other governmental entity or of owners providing public services, or disrupt those services being provided by others, or otherwise inconvenience the owners of that property or those facilities without having first obtained the written consent of those owners.

(b) If the owners of the property, including facilities, desire to handle the change, alteration, or damage of the property, including facilities, with their own personnel or to have the work done by contractors of their own choosing, the district may agree with the owners to provide for the necessary changes, alterations, or damage of the property, including facilities, by the owners or contractors and the reimbursement by the district to those owners of the costs incurred by the owners in making those changes, alterations, or damages or having them accomplished by contractors.

Sec. 3833.212. NO EMINENT DOMAIN POWER. The district may not exercise the power of eminent domain.

[Sections 3833.213-3833.250 reserved for expansion]

SUBCHAPTER F. GENERAL FINANCIAL PROVISIONS

Sec. 3833.251. BOARD VOTE REQUIRED TO IMPOSE TAXES OR ISSUE BONDS. The district may not impose a tax or issue bonds unless four directors vote in favor of the tax or the issuance of bonds.

Sec. 3833.252. BORROWING MONEY. The district may borrow money on terms and conditions the board determines.

Sec. 3833.253. APPLICABILITY OF WATER DISTRICTS LAW ON GENERAL FISCAL PROVISIONS. (a) Except as provided by Subsection (b), Subchapter E, Chapter 49, Water Code, applies to the district.

(b) Section 49.153, Water Code, does not apply to the district.

Sec. 3833.254. INSURANCE. The district may obtain insurance and pay premiums to insurers for insurance of any type in amounts considered necessary or advisable by the board.

Sec. 3833.255. DISADVANTAGED BUSINESSES. Section 375.222, Local Government Code, applies to the district.

Sec. 3833.256. AUDIT. (a) The board shall have the district's fiscal accounts and records audited annually. The audit must be completed not later than the 120th day after the date on which the district's fiscal year ends.

(b) The person who performs the audit must hold a license issued under Chapter 901, Occupations Code.

(c) The audit must be performed according to generally accepted auditing standards.

Sec. 3833.257. STATE AUDITOR. The state auditor may audit the financial transactions of the district if the state auditor determines the audit is necessary.

Sec. 3833.258. FINANCIAL REPORTS. (a) The district shall keep a full and itemized account of district money. These accounts must be available for audit.

(b) Financial statements must be prepared in accordance with generally accepted accounting principles.

Sec. 3833.259. APPLICABILITY OF WATER DISTRICTS LAW ON CONSTRUCTION, EQUIPMENT, MATERIALS, AND MACHINERY CONTRACTS. (a) Except as provided by Subsection (b), Subchapter I, Chapter 49, Water Code, applies to the district.

(b) Section 49.279, Water Code, does not apply to the district.

Sec. 3833.260. PREVAILING WAGE RATES; CITY. The district shall use the prevailing wage rate in the city for purposes of complying with Section 2258.022, Government Code.

Sec. 3833.261. HIGH TECHNOLOGY PROCUREMENT. In making a high technology procurement, the district must comply with Sections 252.021(a) and 252.042, Local Government Code, in the same manner as a municipality governed by those sections.

Sec. 3833.262. ASSESSMENTS OR IMPACT FEES NOT AUTHORIZED. The district may not impose an assessment or impact fee.

[Sections 3833.263-3833.300 reserved for expansion]

SUBCHAPTER G. TAXES

Sec. 3833.301. AD VALOREM TAXES FOR MAINTENANCE AND OPERATION OR TO PAY BONDS. Section 49.107, Water Code, and Subchapter G, Chapter 54, Water Code, apply to the district.

Sec. 3833.302. ELIGIBILITY FOR INCLUSION IN SPECIAL ZONES. (a) All or any part of the area of the district is eligible to be included in a tax increment reinvestment zone created by the city under Chapter 311, Tax Code.

(b) If the city includes all or part of the district in a tax increment reinvestment zone, the city may, for the area in the district, delegate to the district:

(1) all powers provided to the city under Chapter 311, Tax Code; or
(2) the power to enter into an interlocal agreement with an overlapping
taxing unit for payment of all or a portion of the tax increment of the unit to the
district.

Sec. 3833.303. NO SALES AND USE TAX. The district may not impose a
sales or use tax.

Sec. 3833.304. NO TAX PHASE-INS AND ABATEMENTS. The district may
not grant a tax abatement or phase-in under Chapter 311 or 312, Tax Code, or any
other law.

[Sections 3833.305-3833.350 reserved for expansion]

SUBCHAPTER H. BONDS

Sec. 3833.351. BONDS AND OTHER OBLIGATIONS. (a) The district may
issue bonds payable wholly or partly from ad valorem taxes, revenue, grants, or other
money of the district, or any combination of those sources of money, to pay for any
authorized purpose of the district.

(b) The district may issue a bond or other obligation in the form of a bond, note,
certificate of participation, or other instrument evidencing a proportionate interest in
payments to be made by the district, or other type of obligation.

Sec. 3833.352. CITY CONSENT FOR PUBLIC IMPROVEMENTS BONDS.
Before issuing any bonds in connection with an improvement under Subchapter C or
Section 3833.206, the district must obtain the approval of the city's governing body
by a resolution approving:

(1) the issuance of the bonds; and

(2) the plans and specifications of the improvement, including any
substantial alteration to a plan or specification.

Sec. 3833.353. CITY NOT REQUIRED TO PAY DISTRICT OBLIGATIONS.
Except as provided by Section 3833.452, the city is not required to pay a bond, note,
or other obligation of the district.

Sec. 3833.354. APPLICABILITY OF MUNICIPAL UTILITY DISTRICTS
BONDS LAW. Sections 54.510, 54.512, 54.518, 54.520, and 54.521, Water Code,
apply to the district.

Sec. 3833.355. BOND SALES. Section 49.183, Water Code, applies to the
district.

Sec. 3833.356. BOND ELECTIONS; GENERAL. Section 49.106, Water Code,
applies to the district.

Sec. 3833.357. BOND ELECTION REQUIRED. The district may not issue
bonds payable in whole or in part from taxes unless the issuance is approved by a
majority of the registered voters in the district voting at an election held for that
purpose.

Sec. 3833.358. BOND ELECTION NOT REQUIRED. The district may issue
bonds payable only from sources other than taxes without an election.

[Sections 3833.359-3833.400 reserved for expansion]

SUBCHAPTER I. ADDITIONAL ELECTION PROVISIONS

Sec. 3833.401. TIME OF ELECTION. An election held under this chapter may
be held at the same time and in conjunction with any other election.

Sec. 3833.402. ELECTION CALLED BY BOARD. The board may call an election for the purpose of voting on any measure.

[Sections 3833.403-3833.450 reserved for expansion]

SUBCHAPTER J. DISSOLUTION

Sec. 3833.451. DISSOLUTION BY CITY VOTE. The governing body of the city, by a vote of not less than two-thirds of its membership, may by resolution dissolve the district.

Sec. 3833.452. ASSETS AND LIABILITIES TO CITY. After a dissolution under this subchapter, the city assumes all debts and assets of the district.

SECTION 2. Unless modified to meet a condition to the consent required by Section 3833.003 or 3833.023, Special District Local Laws Code, as added by this Act, the Espada Development District includes all the territory contained in the following described area:

Tract 1:

A 740.59 acre, or 32,260,018 square foot more or less, tract of land being a portion of that remaining portion of a 1115.024 acre tract as recorded and conveyed to Donald R. Vestal in Warranty Deed recorded in Volume 5716, Page 396-412 of the Official Public Records of Real Property of Bexar County, Texas, a portion of that 672.567 acre tract as recorded and conveyed to Bexar Metropolitan Water in Warranty Deed recorded in Volume 7057, Page 1327-1336 of the Official Public Records of Real Property of Bexar County, Texas, being out of the Juan M. Uriegas Survey No. 32, Abstract 769, County Block 4283 of Bexar County, Texas, situated in New City Block (N.C.B.) 15647 of the City of San Antonio, Bexar County, Texas. Said 740.59 acre tract being more fully described as follows:

BEGINNING: At a found 1/2" iron rod on the east right-of-way line of South Flores Street (F.M. 1937), a 40-foot right-of-way, the southeast corner of said 672.567 acre tract, the west line of said remaining portion of said 1115.024 acre tract;

THENCE: Along and with the east line of said South Flores Street (F.M. 1937), the west line of said remaining portion of said 1115.024 acre tract, the following calls and distances:

N 14°09'09"W, a distance of 117.47 feet to a found 1/2" iron rod;

N 14°52'33"W, a distance of 21.07 feet to a Texas Department of Transportation Monument;

N 15°30'04"W, a distance of 1409.70 feet to a Texas Department of Transportation Monument;

N 15°57'21"W, a distance of 2007.89 feet to a Texas Department of Transportation Monument on the east right-of-way line of U.S. Highway 281, a variable width right-of-way;

THENCE: N 13°16'45"W, along and with the east right-of-way line of said U.S. Highway 281, a distance of 485.43 feet to a Texas Department of Transportation Monument;

THENCE: N 16°07'55"W, continuing along and with the east right-of-way line of said U.S. Highway 281, a distance of 905.55 feet to a found 1/2" iron rod;

THENCE: N 72°56'55"E, departing the east right-of-way line of said U.S. Highway 281, the west line of the remaining portion of said 1115.024 acre tract, a distance of 888.02 feet to a point on the south line of said 35.80 acre tract, the north line of the remaining portion of said 1115.024 acre tract;

THENCE: S 89°57'22"E, along and with the north line of the remaining portion of said 1115.024 acre tract, a distance of 4361.85 feet to a point on the south line of a 2.090 acre tract recorded in Volume 6749, Page 121-125 of the Deed Records of Bexar County, Texas;

THENCE: S 00°00'00"W, departing the south line of said 2.090 acre tract, the north line of the remaining portion of said 1115.024 acre tract, a distance of 317.01 feet to a point;

THENCE: S 08°10'26"E, a distance of 1574.05 feet to a point;

THENCE: N 81°10'44"E, a distance of 586.75 feet to a point;

THENCE: N 78°26'10"E, a distance of 816.04 feet to a point on the west line of said 672.567 acre tract;

THENCE: Along and with the west line of said 672.567 acre tract, the following calls and distances:

S 13°56'24"E, a distance of 116.96 feet to a found 1/2" iron rod;

S 33°07'16"E, a distance of 530.97 feet to a Texas Department of Transportation Monument with a brass plate;

S 55°27'49"E, a distance of 144.31 feet to a Texas Department of Transportation Monument with a brass plate;

S 60°34'06"E, a distance of 339.63 feet to a Texas Department of Transportation Monument with a brass plate;

S 40°22'42"W, a distance of 217.12 feet to a found 1/2" iron rod on the north line of said 672.567 acre tract;

THENCE: Along and with the north line of said 672.567 acre tract, the following calls and distances:

N 75°06'48"W, a distance of 299.40 feet to a found 1/2" iron rod;

N 63°23'14"W, a distance of 259.33 feet to a found 1/2" iron rod;

N 37°10'46"W, a distance of 334.69 feet to a point;

THENCE: Departing the north line of said 672.567 acre tract, the following calls and distances:

S 06°38'09"W, a distance of 275.92 feet to a point;

N 66°24'27"W, a distance of 140.04 feet to a point;

N 63°12'53"W, a distance of 118.33 feet to a point;

S 79°06'43"W, a distance of 113.52 feet to a point;

S 49°34'25"W, a distance of 80.15 feet to a point;

N 87°18'21"W, a distance of 110.18 feet to a point;

S 88°22'14"W, a distance of 170.33 feet to a point;

S 58°19'38"W, a distance of 165.81 feet to a point;

S 37°26'15"W, a distance of 188.04 feet to a point;

S 16°24'37"W, a distance of 140.40 feet to a point;

S 41°27'25"W, a distance of 263.61 feet to a point;

S 37°35'31"W, a distance of 243.33 feet to a point;

S 36°10'37"W, a distance of 108.98 feet to a point;

S 67°06'23"W, a distance of 117.23 feet to a point;
S 80°09'09"W, a distance of 334.62 feet to a point;
S 73°27'54"W, a distance of 230.48 feet to a point;
N 54°19'25"W, a distance of 163.98 feet to a point;
N 17°35'33"W, a distance of 430.18 feet to a point;
N 54°27'44"W, a distance of 172.07 feet to a point;
N 21°48'05"W, a distance of 188.51 feet to a point;
N 37°15'59"W, a distance of 289.05 feet to a point;
N 14°49'35"W, a distance of 351.76 feet to a point;
N 34°46'40"W, a distance of 219.18 feet to a point;
N 50°42'38"W, a distance of 142.15 feet to a point;
N 37°18'14"W, a distance of 132.02 feet to a point;
N 20°07'11"W, a distance of 537.89 feet to a point;
N 22°31'14"W, a distance of 221.95 feet to a point;
N 12°01'50"W, a distance of 311.89 feet to a point;
N 02°56'08"W, a distance of 195.28 feet to a point;
N 19°46'52"W, a distance of 111.22 feet to a found 1/2" iron rod on the north

line of said 672.567 acre tract;

N 89°53'20"W, a distance of 259.68 feet to a point;

THENCE: Departing the north line of said 672.567 acre tract, the following calls and distances:

S 09°56'21"E, a distance of 530.36 feet to a point;
S 17°50'25"E, a distance of 228.49 feet to a point;
S 21°17'50"E, a distance of 316.62 feet to a point;
S 16°00'40"E, a distance of 598.20 feet to a point;
S 45°39'31"E, a distance of 307.61 feet to a point;
S 34°06'52"E, a distance of 187.22 feet to a point;
S 19°17'24"E, a distance of 402.60 feet to a point;
S 61°28'37"E, a distance of 104.71 feet to a point;
S 28°08'30"E, a distance of 243.82 feet to a point;
S 01°14'01"E, a distance of 232.25 feet to a point;
S 75°55'09"W, a distance of 22.99 feet to a point;
S 44°37'47"W, a distance of 83.38 feet to a point;
S 18°40'42"W, a distance of 205.95 feet to a point;
S 08°00'07"W, a distance of 133.57 feet to a point;
S 04°21'40"E, a distance of 153.65 feet to a point;
S 22°18'37"E, a distance of 115.10 feet to a point;
S 37°18'31"E, a distance of 112.15 feet to a point;
S 50°24'55"E, a distance of 186.70 feet to a point;
S 63°38'21"E, a distance of 108.62 feet to a point;
S 80°06'26"E, a distance of 191.33 feet to a point;
S 89°00'59"E, a distance of 115.96 feet to a point;
N 86°28'43"E, a distance of 179.35 feet to a point;
N 88°19'30"E, a distance of 78.78 feet to a point;
N 82°38'44"E, a distance of 129.80 feet to a point;
N 84°00'13"E, a distance of 197.49 feet to a point;

N 75°54'18"E, a distance of 208.41 feet to a point;
N 78°38'32"E, a distance of 193.76 feet to a point;
N 71°13'44"E, a distance of 231.05 feet to a point;
N 62°44'11"E, a distance of 123.08 feet to a point;
N 50°15'54"E, a distance of 149.00 feet to a point;
N 63°06'59"E, a distance of 166.38 feet to a point;
N 71°41'34"E, a distance of 64.52 feet to a point;
N 89°42'47"E, a distance of 27.62 feet to a point;
N 75°23'41"E, a distance of 76.58 feet to a point;
N 59°52'07"E, a distance of 124.83 feet to a point;
N 48°19'11"E, a distance of 54.41 feet to a point;
N 81°03'14"E, a distance of 175.20 feet to a point;
N 75°58'25"E, a distance of 154.24 feet to a point;
N 63°27'07"E, a distance of 132.46 feet to a point;
N 45°01'16"E, a distance of 111.58 feet to a point;
N 37°25'33"E, a distance of 49.74 feet to a point;
N 67°00'04"E, a distance of 76.76 feet to a point;
S 85°04'33"E, a distance of 99.44 feet to a point;
S 67°31'46"E, a distance of 122.13 feet to a point;
S 41°52'34"E, a distance of 62.30 feet to a point;
S 22°52'47"E, a distance of 87.06 feet to a point;
S 13°27'16"E, a distance of 120.82 feet to a point;
S 00°00'00"W, a distance of 112.66 feet to a point;
S 21°43'58"W, a distance of 123.92 feet to a point;
S 25°52'55"W, a distance of 161.82 feet to a point;
S 03°39'18"E, a distance of 104.10 feet to a point;
S 10°18'09"E, a distance of 292.00 feet to a point;
S 49°51'53"E, a distance of 66.40 feet to a point;
S 80°22'10"E, a distance of 85.28 feet to a point;
N 64°43'28"E, a distance of 159.65 feet to a point;
N 83°25'22"E, a distance of 83.04 feet to a point;
N 67°42'41"E, a distance of 124.59 feet to a point;
S 82°18'12"E, a distance of 155.12 feet to a point;
S 70°04'06"E, a distance of 90.99 feet to a point;
S 52°01'18"E, a distance of 216.61 feet to a point;
S 66°37'04"E, a distance of 201.52 feet to a point;
S 76°19'46"E, a distance of 197.81 feet to a point;
S 70°55'51"E, a distance of 84.60 feet to a point;
S 46°29'24"E, a distance of 60.73 feet to a point;
S 20°17'22"E, a distance of 168.97 feet to a point;
S 29°45'47"E, a distance of 72.65 feet to a point;
S 01°20'00"W, a distance of 96.88 feet to a point;
S 27°29'30"E, a distance of 63.48 feet to a point;
S 58°15'34"E, a distance of 111.32 feet to a point;
S 87°30'44"E, a distance of 103.79 feet to a point;
N 53°09'02"E, a distance of 90.14 feet to a point;

N 84°48'34"E, a distance of 124.49 feet to a point;
N 59°11'16"E, a distance of 129.89 feet to a point;
N 24°32'06"E, a distance of 115.64 feet to a point;
N 77°40'11"E, a distance of 92.58 feet to a point;
S 84°17'37"E, a distance of 85.21 feet to a point;
S 62°08'27"E, a distance of 173.69 feet to a point;
N 82°41'59"E, a distance of 71.00 feet to a point;
S 76°18'10"E, a distance of 76.21 feet to a point;
S 49°55'12"E, a distance of 89.68 feet to a point;
S 03°41'39"E, a distance of 112.11 feet to a point;
S 34°42'58"E, a distance of 307.98 feet to a point;
S 48°33'12"E, a distance of 324.35 feet to a point;
S 09°52'23"E, a distance of 131.90 feet to a point;
S 03°49'01"W, a distance of 169.87 feet to a point;
S 51°25'25"W, a distance of 425.43 feet to a point on the south line of said 672.567 acre tract;

THENCE: N 73°30'59"W, along and with the south line of said 672.567 acre tract, a distance of 2068.97 feet to a point;

THENCE: S 84°13'34"W, departing the south line of said 672.567 acre tract, a distance of 3741.80 feet to a point, a southeast corner of said 672.567 acre tract;

THENCE: N 72°46'06"W, along and with the south line of said 672.567 acre tract, a distance of 3116.51 feet to the POINT OF BEGINNING, and containing 740.59 acres in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey map prepared by Pape-Dawson Engineers, Inc.

Tract 2:

A 107.94 acre, or 4,702,064 square foot more or less, tract of land being, all of that 12.226 and 22.227 acre tract as recorded and conveyed to Incarnate Word College in Warranty Deed recorded in Volume 6344, Page 595-598 of the Official Public Records of Real Property of Bexar County, Texas, all of that 2.00 acre tract as recorded and conveyed to Gary J. Roberts Jr. and Heather N. Roberts in Warranty Deed recorded in Volume 7936, Page 2083-2086 of the Official Public Records of Real Property of Bexar County, Texas, all of that 2.089 acre tract as recorded and conveyed to Gilbert R. Jimenez and Robert D. Garza in Warranty Deed recorded in Volume 5073, Page 989-990 of the Official Public Records of Real Property of Bexar County, Texas, all of that 2.089 acre tract as recorded and conveyed to Fred and Lydia Jimenez in Warranty Deed recorded in Volume 6749, Page 105-109 of the Official Public Records of Real Property of Bexar County, Texas, a portion of that 10.00 acre tract as recorded and conveyed to Richard G. Pulido Trust in Warranty Deed recorded in Volume 9424, Page 159-161 of the Official Public Records of Real Property of Bexar County, Texas, a portion of that remaining 20.00 acre tract as recorded and conveyed to Joe A. De Gasperi in Warranty Deed recorded in Volume 9031, Page 2306-2307 of the Official Public Records of Real Property of Bexar County, Texas, all of that 6.00 acre tract as recorded and conveyed to Herman Roberts and Rosie Roberts in Warranty Deed recorded in Volume 7139, Page 806-809 of the Official Public Records of Real Property of Bexar County, Texas, all of that 2.089 acre tract as

recorded and conveyed to Herman Roberts and Rosie Roberts in Warranty Deed recorded in Volume 6749, Page 99-104 of the Official Public Records of Real Property of Bexar County, Texas, all of that 9.967 acre tract as recorded and conveyed to Herman Roberts and Rosie Roberts in Warranty Deed recorded in Volume 6785, Page 29-32 of the Official Public Records of Real Property of Bexar County, Texas, all of that 10.00 acre tract as recorded and conveyed to Hiram Polendo in Warranty Deed recorded in Volume 5624, Page 1030-1034 of the Official Public Records of Real Property of Bexar County, Texas, and being out of the Juan M. Uriegas Survey No. 32, Abstract 769, County Block 4283 of Bexar County, Texas, situated in New City Block (N.C.B.) 11039 and 15647 of the City of San Antonio, Bexar County, Texas. Said 107.94 acre tract being more fully described as follows:

COMMENCING: At a found 1/2" iron rod on the east right-of-way line of U.S. Highway 281, a variable width right-of-way, the northwest corner of the remaining portion of a 1115.024 acre tract recorded in Volume 5716, Page 396-412 of the Official Public Records of Real Property of Bexar County, Texas, the southwest corner of the remaining portion of a 35.80 acre tract recorded in Volume 5079, Page 222-225 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE: S 89°57'22"E, departing the east right-of-way line of said U.S. Highway 281, along and with the south line of the remaining portion of said 35.80 acre tract, the north line of the remaining portion of said 1115.024 acre tract, a distance of 2844.44 feet to the POINT OF BEGINNING, southeast corner of the remaining portion of a 42.153 acre tract recorded in Volume 4145, Page 1731-1732 of the Official Public Records of Real Property of Bexar County, Texas; the southwest corner of said 22.227 acre tract;

THENCE: N 00°48'52"W, along and with the east line of the remaining portion of said 42.153 acre tract, the west line of said 22.227 acre tract, at a distance of 1396.26 feet passing the southeast corner of a 30.00 acre tract recorded in Volume 9859, Page 1413-1416 of the Official Public Records of Real Property of Bexar County, Texas, continuing along with the west line of said 22.227 acre tract, the east line of said 30.00 acre tract, at a distance of 3355.41 feet passing a northeast corner of said 30.00 acre tract, the southwest corner of a 1.00 acre tract recorded in Volume 5957, Page 1565-1567 of the Official Public Records of Real Property of Bexar County, Texas, continuing along and with the east line of said 1.00 acre tract, the west line of said 22.227 acre tract, for a total distance of 3563.85 feet to a point on the south right-of-way line of Chavaneaux Road, a 50-foot right-of-way, the northeast corner of said 1.00 acre tract, the northwest corner of said 22.227 acre tract;

THENCE: S 89°49'44"E, along and with the south right-of-way line of said Chavaneaux Road, a distance of 827.52 feet to a point, the northeast corner of the remaining portion of a 20.25 acre tract recorded in Volume 7139, Page 806-809 of the Official Public Records of Real Property of Bexar County, Texas, the northwest corner of a 2.00 acre tract recorded in Volume 8298, Page 1014-1016 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE: S 00°29'54"W, departing the south right-of-way line of said Chavaneaux Road, along and with the east line of the remaining portion of said 20.25 acre tract, a distance of 1101.22 feet to a point, the southwest corner of a 1.00 acre tract recorded in Volume 9108, Page 1703-1705 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE: S 89°49'44"E, departing the east line of the remaining portion of said 20.25 acre tract, a distance of 775.92 feet to a point on the west line of a 14.94 acre tract recorded in Volume 4616, Page 398-399 of the Official Public Records of Real Property of Bexar County, Texas, the east line of the remaining portion of said 20.00 acre tract;

THENCE: S 00°29'54"W, along and with the east line of the remaining portion of said 20.00 acre tract, a distance of 2157.76 feet to a point, the northwest corner of a 2.303 acre tract recorded in Volume 7192, Page 267-268 of the Official Public Records of Real Property of Bexar County, Texas, a corner of the remaining portion of said 20.00 acre tract;

THENCE: S 11°44'36"W, along and with the east line of the remaining portion of said 20.00 acre tract, the west line of said 2.303 acre tract, a distance of 307.41 feet to a point, the southwest corner of said 2.303 acre tract, the southeast corner of said 20.00 acre tract, on the north line of the remaining portion of said 1115.024 acre tract;

THENCE: N 89°57'22"W, along and with the north line of the remaining portion of said 1115.024 acre tract, a distance of 1461.86 feet to the POINT OF BEGINNING, and containing 107.94 acres in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey map prepared by Pape-Dawson Engineers, Inc.

SECTION 3. The legislature finds that:

(1) proper and legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and laws of this state, including the governor, who has submitted the notice and Act to the Texas Commission on Environmental Quality;

(2) the Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time; and

(3) all requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act have been fulfilled and accomplished.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

Floor Amendment No. 1

Amend **CSSB 1892** as follows:

(1) In Section 1 of the bill, in added Section 3833.003(b), Special District Local Laws Code (page 2, line 8), strike "body's consent may be conditional, as" and substitute "body may condition its consent on any terms".

(2) In Section 1 of the bill, in added Section 3833.021(b)(1), Special District Local Laws Code (page 5, line 5), strike "initial".

(3) In Section 1 of the bill, in added Subchapter B, Chapter 3833, Special District Local Laws Code (page 8, between lines 13 and 14), insert a new Section 3833.0601 as follows:

Sec. 3833.0601. REPORTING REQUIREMENTS. (a) After each board meeting, and at least once per month, the board shall provide a written status report to each state senator and state representative who represents a portion of the district.

(b) The report must include a copy of the board minutes, provide information on the progress of development in the district, and include information on district finances, obstacles to progress, successes, and all other important matters.

(c) This section expires January 1, 2007.

(4) In Section 1 of the bill, in added Section 3833.151(b)(12), Special District Local Laws Code (page 11, line 14), strike "City Public Service" and substitute "CPS Energy".

(5) In Section 1 of the bill, in added Section 3833.151(c), Special District Local Laws Code (page 11, line 16), strike "(b)(4)-(12)" and substitute "(b)(4)-(11)".

(6) In Section 1 of the bill, in added Subchapter H, Chapter 3833, Special District Local Laws Code (page 20, between lines 18 and 19), insert a new Section 3833.359 as follows:

Sec. 3833.359. PLEDGES. (a) The district may pledge to the payment of the principal or interest or any other amounts due under district bonds all or any part of:

(1) district taxes;

(2) revenue from a public improvement financed under this chapter, except as provided by Subsection (c); or

(3) money from grants, donations, or other income or funds received or to be received from any public or private entity.

(b) The district shall set and collect the pledged funds in amounts that are at least sufficient, with any other pledged resources, to provide for all payments of principal, interest, and any other amounts due or required in connection with the bonds and, to the extent required by the order or resolution authorizing the issuance of the bonds, to provide for the payment of expenses in connection with the bonds and to pay operation, maintenance, and other expenses in connection with the public improvements undertaken by the district.

(c) The district may not encumber, or pledge revenue under this section from, a public improvement that the district may be required to transfer under Section 3833.151.

(7) In Section 1 of the bill, in added Chapter 3833, Special District Local Laws Code, between Subchapters H and I (page 20, line 19), strike "3833.359-3833.400 reserved for expansion" and substitute "3833.360-3833.400 reserved for expansion".

The amendments were read.

Senator Madla moved to concur in the House amendments to **SB 1892**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

MESSAGE FROM THE HOUSE**HOUSE CHAMBER**

Austin, Texas

May 28, 2005

The Honorable President of the Senate

Senate Chamber

Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS DISCHARGED ITS CONFEREES AND CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 1701 (non-record vote)**HB 2639** (non-record vote)

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives**SENATE BILL 874 WITH HOUSE AMENDMENT**

Senator Nelson called **SB 874** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 874** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED**AN ACT**

relating to quality-of-care monitoring visits to long-term care facilities.

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

SECTION 1. Section 255.001(1), Health and Safety Code, is amended to read as follows:

(1) "Department" means the [~~Texas~~] Department of Aging and Disability [~~Human~~] Services.

SECTION 2. Sections 255.003(a) and (f), Health and Safety Code, are amended to read as follows:

(a) The department shall establish regional offices with one or more quality-of-care monitors, based on the number of long-term care facilities in the region, to monitor the facilities in the region on a regular, [~~unannounced,~~] aperiodic basis, including nights, evenings, weekends, and holidays. A monitoring visit conducted under this chapter may be announced or unannounced.

(f) The quality-of-care monitor shall include in a monitoring [~~an assessment~~] visit:

(1) observation of the care and services rendered to residents; and

(2) formal and informal interviews with residents, family members, facility staff, resident guests, volunteers, other regulatory staff, and representatives of a human rights advocacy committee.

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

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 874**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE ON HOUSE BILL 2760

Senator Van de Putte, on behalf of Senator Averitt, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2760** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer, Senator Williams in Chair, asked if there were any motions to instruct the conference committee on **HB 2760** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Averitt, Chair; Armbrister, Estes, Fraser, and Van de Putte.

CONFERENCE COMMITTEE ON HOUSE BILL 955

Senator Van de Putte, on behalf of Senator Averitt, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 955** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 955** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Averitt, Chair; Fraser, Eltife, Estes, and Van de Putte.

CONFERENCE COMMITTEE ON HOUSE BILL 260

Senator Van de Putte, on behalf of Senator Averitt, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 260** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 260** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Averitt, Chair; Wentworth, Harris, Duncan, and Hinojosa.

CONFERENCE COMMITTEE ON HOUSE BILL 698

Senator Eltife, on behalf of Senator Averitt, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 698** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 698** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Averitt, Chair; Fraser, Ellis, Lucio, and Eltife.

CONFERENCE COMMITTEE ON HOUSE BILL 2795

Senator Eltife, on behalf of Senator Averitt, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2795** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2795** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Averitt, Chair; Wentworth, Hinojosa, Duncan, and Harris.

CONFERENCE COMMITTEE ON HOUSE BILL 2329

Senator Eltife, on behalf of Senator Ogden, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2329** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2329** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Ogden, Chair; Lucio, Hinojosa, Fraser, and Brimer.

CONFERENCE COMMITTEE ON HOUSE BILL 2793

Senator Eltife, on behalf of Senator Jackson, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2793** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2793** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Jackson, Chair; Armbrister, Harris, Lucio, and Shapleigh.

RECESS

On motion of Senator Whitmire, the Senate at 2:05 p.m. recessed until 4:00 p.m. today.

AFTER RECESS

The Senate met at 5:15 p.m. and was called to order by Senator Armbrister.

SENATE BILL 1038 WITH HOUSE AMENDMENT

Senator Lucio called **SB 1038** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment No. 1

Amend **SB 1038** on page 1, lines 10 and 11 by striking "that has a population of 250,000 [~~one million~~] or more and", and substituting "[~~that has a population of one million or more and~~]".

The amendment was read.

Senator Lucio moved to concur in the House amendment to **SB 1038**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 411 WITH HOUSE AMENDMENTS

Senator Whitmire called **SB 411** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 411** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of barbers and cosmetologists by the Texas Department of Licensing and Regulation and the abolition of the State Board of Barber Examiners and the Texas Cosmetology Commission.

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

ARTICLE 1. TEXAS DEPARTMENT OF LICENSING AND REGULATION

SECTION 1.01. Title 9, Occupations Code, is amended by adding Chapter 1603 to read as follows:

CHAPTER 1603. REGULATION OF BARBERING AND COSMETOLOGY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1603.001. GENERAL DEFINITIONS. (a) In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Department" means the Texas Department of Licensing and Regulation.

(3) "Executive director" means the executive director of the department.

(b) Unless the context clearly indicates otherwise, the definitions in Chapters 1601 and 1602 apply to this chapter.

Sec. 1603.002. REGULATION OF BARBERING AND COSMETOLOGY BY DEPARTMENT OF LICENSING AND REGULATION. The department shall administer this chapter and Chapters 1601 and 1602. A reference in this chapter to the commission's or department's powers or duties applies only in relation to those chapters, except that this section does not limit the department's or commission's general powers under Chapter 51.

[Sections 1603.003-1603.050 reserved for expansion]

SUBCHAPTER B. ADVISORY BOARDS FOR BARBERING AND
COSMETOLOGY

Sec. 1603.051. DUTIES. The advisory boards established under Chapters 1601 and 1602 shall advise the commission on administering this chapter and Chapters 1601 and 1602 regarding barbering or cosmetology, as applicable.

[Sections 1603.052-1603.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 1603.101. RULES. The commission shall adopt rules consistent with this chapter for:

(1) the administration of this chapter and the operations of the department in regulating barbering and cosmetology; and

(2) the administration of Chapters 1601 and 1602.

Sec. 1603.102. SANITATION RULES. The commission shall establish sanitation rules to prevent the spread of an infectious or contagious disease.

Sec. 1603.103. INSPECTION OF SCHOOLS, SHOPS, AND FACILITIES BEFORE OPERATION. (a) Until the department determines, by inspection, that the person has established the school, shop, or facility in compliance with this chapter, Chapter 1601, or Chapter 1602, a person may not operate a school, shop, or other facility licensed or permitted under this chapter, Chapter 1601, or Chapter 1602.

(b) A school, shop, or other facility that is not approved by the department on initial inspection may be reinspected.

(c) The school, shop, or other facility shall pay a fee for each inspection. The commission shall by rule set the amount of the fee.

Sec. 1603.104. PERIODIC AND RISK-BASED INSPECTIONS. (a) The department may enter and inspect at any time during business hours:

(1) the place of business of any person regulated under this chapter, Chapter 1601, or Chapter 1602; or

(2) any place in which the department has reasonable cause to believe that a certificate, license, or permit holder is practicing in violation of this chapter, Chapter 1601, or Chapter 1602 or in violation of a rule or order of the commission or executive director.

(b) At least once every two years, the department shall inspect each school, shop, or other facility that holds a license, certificate, or permit under this chapter, Chapter 1601, or Chapter 1602.

(c) The department shall conduct additional inspections based on a schedule of risk-based inspections using the following criteria:

(1) the type and nature of the school, shop, or other facility;

(2) whether there has been a prior sanitation violation at the school, shop, or facility;

(3) the inspection history of the school, shop, or other facility;

(4) any history of complaints involving the school, shop, or other facility;

and

(5) any other factor determined by the commission by rule.

(d) An inspector who discovers a violation of this chapter, Chapter 1601, or Chapter 1602 or of a rule or order of the commission or executive director shall:

(1) provide written notice of the violation to the license, certificate, or permit holder on a form prescribed by the department; and

(2) file a complaint with the executive director.

(e) The school, shop, or other facility shall pay a fee for each inspection performed under Subsection (c). The commission shall by rule set the amount of the fee.

Sec. 1603.105. RETENTION OF STUDENT RECORDS. The department may not retain student records, including student transcripts, beyond the time required by state law.

[Sections 1603.106-1603.150 reserved for expansion]

SUBCHAPTER D. PUBLIC PARTICIPATION AND

COMPLAINT PROCEDURES

Sec. 1603.151. NOTIFICATION OF PUBLIC INTEREST INFORMATION AND PARTICIPATION. The commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department regarding barbering and cosmetology. The department may provide for that notice:

(1) on each registration form, application, or written contract for services of a person regulated under this chapter, Chapter 1601, or Chapter 1602;

(2) on a sign prominently displayed in the place of business of each person regulated under this chapter, Chapter 1601, or Chapter 1602; or

(3) in a bill for service provided by a person regulated under this chapter, Chapter 1601, or Chapter 1602.

Sec. 1603.152. COMPLAINT JURISDICTION; NOTIFICATION. If the department determines that it lacks jurisdiction to resolve the complaint, the department shall notify the complainant in writing that the department is closing the complaint because it lacks jurisdiction.

Sec. 1603.153. ANALYSIS OF COMPLAINTS AND VIOLATIONS. (a) The department shall develop and maintain a system to analyze the processing, sources, and types of complaints filed with the department and the types of violations that occur under this chapter, Chapter 1601, and Chapter 1602.

(b) Based on the information under Subsection (a), the department shall analyze trends in violations and complaints that may require further attention or technical assistance to help reduce the frequency of those complaints and violations.

(c) The department shall annually compile a statistical analysis of the complaints filed and violations occurring during the preceding year, including:

(1) the number of complaints filed;

(2) a categorization of complaints filed according to the basis of the complaint and the number of complaints in each category;

(3) the number of complaints filed by department staff;

(4) the number of complaints filed by persons other than department staff;

(5) the number of complaints filed over which the department lacks jurisdiction;

(6) the average length of time required to close a complaint or violation from the time the department receives the complaint or otherwise initiates an investigation of a possible violation until the complaint or violation is resolved by a final order or penalty;

(7) the number of complaints resolved and the manner in which they were resolved, including:

(A) the number of complaints dismissed and the reasons for dismissal; and

(B) the number of complaints resulting in disciplinary action and the type of disciplinary action taken; and

(8) the number of complaints filed that are unresolved, the number of those complaints filed by department staff, the number of those complaints filed by persons other than department staff, and the average length of time that the unresolved complaints have been on file.

Sec. 1603.154. INFORMAL SETTLEMENT CONFERENCE. The department shall establish guidelines for an informal settlement conference related to a complaint filed with the department.

[Sections 1603.155-1603.200 reserved for expansion]

SUBCHAPTER E. CERTIFICATE, LICENSE, AND PERMIT REQUIREMENTS

Sec. 1603.201. APPLICATION FORM. An application for a certificate, license, or permit must be made on a form prescribed and provided by the department.

Sec. 1603.202. DUPLICATE CERTIFICATE, LICENSE, OR PERMIT. The department shall issue a duplicate certificate, license, or permit to an applicant who:

(1) submits an application for a duplicate certificate, license, or permit to the department; and

(2) pays the required fee.

Sec. 1603.203. PROVISIONAL CERTIFICATE OR LICENSE. (a) The department may issue a provisional certificate or license to an applicant currently licensed in another jurisdiction who seeks a certificate or license in this state and who:

(1) has been licensed in good standing in the profession for which the person seeks the certificate or license for at least two years in another jurisdiction, including a foreign country, that has requirements substantially equivalent to the requirements of this chapter, Chapter 1601, or Chapter 1602, as appropriate; and

(2) has passed a national or other examination recognized by the commission relating to the practice of that profession.

(b) A provisional certificate or license is valid until the date the department approves or denies the provisional certificate or license holder's application. The department shall issue a certificate or license to the provisional certificate or license holder if:

(1) the provisional certificate or license holder is eligible to hold a certificate or license under Chapter 1601 or Chapter 1602; or

(2) the provisional certificate or license holder passes the part of the examination under Chapter 1601 or Chapter 1602 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of the profession in this state and:

(A) the department verifies that the provisional certificate or license holder meets the academic and experience requirements for the certificate or license; and

(B) the provisional certificate or license holder satisfies any other certificate or license requirements.

(c) The department must approve or deny a provisional certificate or license holder's application for a certificate or license not later than the 180th day after the date the provisional certificate or license is issued. The department may extend the 180-day period if the results of an examination have not been received by the department before the end of that period.

Sec. 1603.204. RECIPROCAL CERTIFICATE, LICENSE, OR PERMIT. (a) A person who holds a license, certificate, or permit to practice barbering or cosmetology from another state or country that has standards or work experience requirements that are substantially equivalent to the requirements of this chapter, Chapter 1601, or Chapter 1602 may apply for a license, certificate, or permit to perform the same acts of barbering or cosmetology in this state that the person practiced in the other state or country.

(b) The person must:

(1) submit an application for the license, certificate, or permit to the department; and

(2) pay fees in an amount prescribed by the commission, including any applicable license, certificate, or permit fee.

(c) A person issued a license, certificate, or permit under this section:

(1) may perform the acts of barbering or cosmetology stated on the license, certificate, or permit; and

(2) is subject to the renewal procedures and fees provided in this chapter, Chapter 1601, or Chapter 1602 for the performance of those acts of barbering or cosmetology.

[Sections 1603.205-1603.250 reserved for expansion]

SUBCHAPTER F. EXAMINATION REQUIREMENTS

Sec. 1603.251. DEFINITION. In this subchapter, "examination proctor" means an individual registered under this subchapter to administer a practical examination for the department.

Sec. 1603.252. GENERAL EXAMINATION REQUIREMENTS. (a) The department may accept, develop, or contract for the examinations required by this chapter, including the administration of the examinations.

(b) The executive director shall determine uniform standards for acceptable performance on an examination for a license or certificate under Chapter 1601 and for a license or certificate under Chapter 1602.

(c) The examination must include a written examination as provided by Section 1603.253 and may include a practical examination as provided by Section 1603.256.

Sec. 1603.253. WRITTEN EXAMINATION. The commission shall select an examination for each written examination required under this chapter, Chapter 1601, or Chapter 1602. The written examination must be:

(1) validated by an independent testing professional; or

(2) purchased from a national testing service.

Sec. 1603.254. EXAMINATION FOR BARBERS. (a) An applicant for an examination for a certificate or license issued under Chapter 1601 must submit to the department an application on a form prescribed and provided by the department accompanied by:

(1) two photographs of the applicant, one of which accompanies the application and one of which is to be returned to the applicant to be presented at the examination; and

(2) the appropriate examination fee.

(b) The department shall examine applicants for a Class A barber certificate and a teacher's certificate.

Sec. 1603.255. EARLY EXAMINATION. The department, on written request by a student, may provide for the early written examination of an applicant for a Class A barber certificate, a teacher's certificate, or an operator license who has completed at least 1,000 hours of instruction in a department-approved training program.

Sec. 1603.256. PRACTICAL EXAMINATION. (a) The commission may require a practical examination as it considers necessary for a license or certificate issued under Chapter 1601 or 1602.

(b) The department shall prescribe the method and content of any practical examination.

(c) The following persons may administer a practical examination required under this subchapter:

(1) the department;

(2) a person with whom the department contracts under Section 1603.252;
or

(3) an examination proctor.

Sec. 1603.257. EXAMINATION PROCTOR; REGISTRATION. (a) A person may not act as an examination proctor under this subchapter unless the person is registered with the department under this section.

(b) To be eligible for registration as an examination proctor, a person must:

(1) meet eligibility requirements determined by commission rule;

(2) file with the department an application on a form prescribed by the department; and

(3) pay the required fees as determined by the commission by rule.

(c) If the department requires an examination proctor to administer a practical examination under this subchapter, the examination proctor shall perform the examination administration function of the department in a competent and professional manner and in compliance with:

(1) standards and specifications adopted by the commission under this chapter; and

(2) rules adopted by the commission under this chapter.

[Sections 1603.258-1603.300 reserved for expansion]

SUBCHAPTER G. CERTIFICATE, LICENSE, AND PERMIT RENEWAL

Sec. 1603.301. DENIAL OF RENEWAL DUE TO ADMINISTRATIVE PENALTY. The department may deny a person's request to renew a certificate, license, or permit issued under this chapter, Chapter 1601, or Chapter 1602 if the person has not paid an administrative penalty imposed under Subchapter F, Chapter 51. This section does not apply if:

(1) the person's time to pay or request a hearing has not expired under Section 51.304;

(2) the person has requested a hearing under Section 51.304, but the person's time to pay has not expired under Section 51.307; or

(3) the penalty is stayed.

[Sections 1603.302-1603.350 reserved for expansion]

SUBCHAPTER H. PRACTICE PROVISIONS APPLICABLE TO CHAPTERS 1601 AND 1602

Sec. 1603.351. MINIMUM CURRICULUM FOR SCHOOLS. The commission shall prescribe the minimum curriculum, including the subjects and the number of hours in each subject, taught by a school licensed under this chapter, Chapter 1601, or Chapter 1602, including a private beauty culture school or a vocational cosmetology program in a public school.

Sec. 1603.352. SANITATION REQUIREMENTS FOR CERTAIN SERVICES. (a) A person who holds a license, certificate, or permit issued under this chapter, Chapter 1601, or Chapter 1602 and who performs a barbering service described by Section 1601.002(1)(E) or (F) or a cosmetology service described by Section 1602.002(10) or (11):

(1) shall, before performing the service, disinfect and sterilize with an autoclave each nondisposable instrument used to perform the service; and

(2) may use a disposable supply or instrument only if that supply or instrument is purchased at the location where the service is performed or provided by the person on whom the service is performed.

(b) The owner or manager of a barber shop, barber school, beauty shop, specialty shop, or beauty culture school is responsible for providing an autoclave for use in the shop or school as required by Subsection (a). An autoclave used as required by Subsection (a) must be:

(1) registered and listed with the federal Food and Drug Administration; and

(2) used in accordance with the manufacturer's instructions.

[Sections 1603.353-1603.400 reserved for expansion]

SUBCHAPTER I. DENIAL AND DISCIPLINARY PROCEDURES

Sec. 1603.401. DENIAL, SUSPENSION, OR REVOCATION. The department shall deny an application for issuance or renewal of, or shall suspend or revoke, a certificate, license, or permit if the applicant or person holding the certificate, license, or permit:

(1) engages in gross malpractice;

(2) knowingly continues to practice while having an infectious or contagious disease;

(3) knowingly makes a false or deceptive statement in advertising;

(4) advertises, practices, or attempts to practice under another person's name or trade name;

(5) engages in fraud or deceit in obtaining a certificate, license, or permit; or

(6) engages in an act that violates this chapter, Chapter 51, Chapter 1601, or Chapter 1602 or a rule or order adopted or issued under those chapters.

[Sections 1603.402-1603.450 reserved for expansion]

SUBCHAPTER J. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1603.451. INJUNCTIVE RELIEF. (a) If a certificate, license, or permit holder commits a violation of this chapter, Chapter 1601, Chapter 1602, or a commission rule and the violation poses a serious threat to the public health, the attorney general shall initiate a suit for injunction and proceedings for suspension or revocation of the certificate, license, or permit.

(b) In seeking an injunction under this section, the attorney general is not required to allege or prove:

(1) that an adequate remedy at law does not exist; or

(2) that substantial or irreparable damage would result from the continued violation.

Sec. 1603.452. CIVIL PENALTY. (a) A barber, barbershop owner, barber school, or private beauty culture school that violates this chapter, Chapter 1601, Chapter 1602, or a commission rule is liable for a civil penalty in addition to any injunctive relief or other remedy provided by law.

(b) The amount of the civil penalty for a barber or barbershop owner may not exceed \$25 a day for each violation.

(c) The amount of the civil penalty for a barber school or private beauty culture school may not exceed \$1,000 a day for each violation.

(d) The attorney general may sue to collect the civil penalty.

Sec. 1603.453. APPEAL BOND NOT REQUIRED. The department is not required to give an appeal bond in a cause arising under this chapter, Chapter 1601, or Chapter 1602.

Sec. 1603.454. ENFORCEMENT BY ATTORNEY GENERAL. The attorney general shall represent the department in an action to enforce this chapter, Chapter 1601, or Chapter 1602.

ARTICLE 2. REGULATION OF BARBERING

SECTION 2.01. Section 1601.001(a), Occupations Code, is amended by amending Subdivisions (3), (4), (5), and (8) and adding Subdivisions (4-a) and (4-b) to read as follows:

(3) "Board" means the Advisory [State] Board on Barbering [of Barber Examiners].

(4) "Certificate" means a certificate of registration issued by the department [board].

(4-a) "Commission" means the Texas Commission of Licensing and Regulation.

(4-b) "Department" means the Texas Department of Licensing and Regulation.

(5) "License" means a license issued by the department [board].

(8) "Permit" means a permit issued by the department [board].

SECTION 2.02. Section 1601.003, Occupations Code, is amended to read as follows:

Sec. 1601.003. APPLICATION OF CHAPTER. This chapter does not apply to a person who:

(1) does not represent or advertise to the public directly or indirectly that the person is authorized by the department [board] to practice barbering; and

(2) is:

(A) a physician or registered nurse licensed in this state and operating within the scope of the person's license;

(B) a commissioned or authorized medical or surgical officer of the United States armed forces;

(C) a person regulated under Chapter 1602, if the person practices within the scope of a permit, license, or certificate issued by the department under that chapter [Texas Cosmetology Commission]; or

(D) an inmate in the institutional division of the Texas Department of Criminal Justice who performs barbering during the person's incarceration.

SECTION 2.03. The heading to Subchapter B, Chapter 1601, Occupations Code, is amended to read as follows:

SUBCHAPTER B. ADVISORY [STATE] BOARD ON BARBERING [OF BARBER EXAMINERS]

SECTION 2.04. Section 1601.051(a), Occupations Code, is amended to read as follows:

~~[(a)]~~ The Advisory [State] Board on Barbering [of Barber Examiners] consists of five [seven] members appointed by the presiding officer of the commission, with the commission's approval, [governor with the advice and consent of the senate] as follows:

- (1) two members, each of whom:
 - (A) is engaged in the practice of barbering as a Class A barber [~~and has been for at least five years before being appointed~~]; and
 - (B) does not hold a barbershop permit;
- (2) two members, each of whom [~~one member who~~]:
 - [(A)] is a barbershop owner who holds a barbershop permit; and
 - [(B)] is engaged in the practice of barbering and has been for at least five years before being appointed;
- (3) one member who holds a permit to conduct or operate a barber school[~~;~~
~~and~~
~~[(4) three members who represent the public].~~

SECTION 2.05. Section 1601.055, Occupations Code, is amended to read as follows:

Sec. 1601.055. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms, with the terms of one or two [~~or three~~] members expiring on the same date each odd-numbered year [~~every two years~~].

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, [~~governor~~] shall appoint a replacement to fill the unexpired term.

SECTION 2.06. Section 1601.058, Occupations Code, is amended to read as follows:

Sec. 1601.058. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, [~~governor~~] shall designate a board member as presiding officer to serve in that capacity for a two-year term [~~at the will of the governor~~].

SECTION 2.07. Subchapter B, Chapter 1601, Occupations Code, is amended by adding Section 1601.059 to read as follows:

Sec. 1601.059. BOARD DUTIES. (a) The board shall advise the commission and the department on:

- (1) education and curricula for applicants;
 - (2) the content of examinations;
 - (3) proposed rules and standards on technical issues related to barbering;
- and
- (4) other issues affecting barbering.

(b) The board shall respond to questions from the department and the commission regarding barbering.

SECTION 2.08. Section 1601.253, Occupations Code, is amended to read as follows:

Sec. 1601.253. ELIGIBILITY FOR CLASS A BARBER CERTIFICATE. (a) An applicant for a Class A barber certificate must:

- (1) be at least 16 years of age; and
- (2) pass a written and practical examination demonstrating to the department's [~~board's~~] satisfaction the applicant's fitness and competence to practice barbering.

(b) The department [~~board~~] shall issue a Class A barber certificate to an applicant who:

- (1) complies with the application requirements of this chapter;
- (2) passes the examination with an average grade of at least 75 percent;
- (3) pays the required [a] fee [~~not to exceed \$100~~]; and
- (4) possesses the other qualifications required by this chapter.

SECTION 2.09. Sections 1601.254(a) and (c), Occupations Code, are amended to read as follows:

(a) An applicant for a teacher's certificate must:

- (1) be a Class A barber;
- (2) have at least five years' experience as a practicing barber in a barbershop, two years of which occurred in the two years preceding the application date; and

(3) submit the required [an] examination fee [~~not to exceed \$100~~] with the application.

(c) The department [~~board~~] shall issue a teacher's certificate to an applicant who:

- (1) passes the appropriate examination; and
- (2) pays the required [a] certificate fee [~~not to exceed:~~

~~[(A) \$100, if the applicant fulfills the certificate requirements during the period beginning November 1 of an odd numbered year and extending through October 31 of the following year; or~~

~~[(B) \$50, if the applicant fulfills the certificate requirements during the period beginning November 1 of an even numbered year and extending through October 31 of the following year].~~

SECTION 2.10. Sections 1601.256(b) and (d), Occupations Code, are amended to read as follows:

(b) An applicant for a barber technician license must:

- (1) be at least 16 years of age;
- (2) have completed the seventh grade or the equivalent of the seventh grade;
- (3) have completed a course of instruction in a commission-approved [~~board approved~~] training program consisting of not less than 300 hours in a period of not less than eight weeks; and

(4) submit the required [~~a \$10 administration~~] fee with the application.

(d) The department [~~board~~] shall issue a barber technician license to an applicant who:

- (1) possesses the qualifications described by Subsection (b);
- (2) passes the appropriate examination;
- (3) pays the required [a] license fee [~~not to exceed \$100~~]; and
- (4) has not committed an act that is a ground for denial of a license.

SECTION 2.11. Sections 1601.257(b) and (c), Occupations Code, are amended to read as follows:

(b) An applicant for a manicurist license must:

- (1) be at least 17 [~~16~~] years of age;
- (2) have completed the seventh grade or the equivalent of the seventh grade;
- (3) have completed a commission-approved [~~board approved~~] training program consisting of 600 hours of instruction in manicuring; and

(4) submit the required [~~a \$10 administration~~] fee with the application.

(c) The department [~~board~~] shall issue a manicurist license to an applicant who:

- (1) possesses the qualifications described by Subsection (b);
- (2) passes the appropriate examination;
- (3) pays the required [a] license fee [~~not to exceed \$30~~]; and
- (4) has not committed an act that is a ground for denial of a license.

SECTION 2.12. Section 1601.260, Occupations Code, is amended to read as follows:

Sec. 1601.260. ELIGIBILITY FOR STUDENT PERMIT. (a) An applicant for a permit to be a student in a barber school must:

- (1) submit an enrollment application to the department [~~board~~] in the form prescribed by the department [~~board~~];
- (2) have completed the seventh grade;
- (3) satisfy other requirements specified by the department [~~board~~]; and
- (4) submit with the application the required [a] nonrefundable application fee [~~in an amount not to exceed \$25~~].

(b) A separate application is required for each enrollment, reenrollment, or transfer enrollment. The application fee applies only to the first enrollment. The department [~~board~~] may not charge the application fee for any later enrollment, reenrollment, or transfer enrollment.

SECTION 2.13. Section 1601.265, Occupations Code, is amended to read as follows:

Sec. 1601.265. WAIVER OF LICENSE REQUIREMENTS; PERSONAL INTERVIEW. (a) The department [~~board~~] may waive any license requirement for an applicant holding a license from another state or country that has license requirements substantially equivalent to those of this state.

(b) The department [~~board~~] may not require a personal interview as part of the application process.

SECTION 2.14. Section 1601.301(b), Occupations Code, is amended to read as follows:

(b) Not later than the third day after the date the shop opens, a [~~A~~] person who owns, operates, or manages a barbershop or specialty shop must[~~—~~]

[~~(1)~~] submit an application to the department [~~board~~] for an appropriate permit for each shop, accompanied by a fee set by commission rule[~~—~~]; and

[~~(2)~~] register with the board the person's full name and the location of each shop[~~—~~].

SECTION 2.15. Section 1601.303, Occupations Code, is amended to read as follows:

Sec. 1601.303. ISSUANCE OF BARBERSHOP PERMIT. The department [~~board~~] shall issue a barbershop permit to an applicant if:

- (1) the applicant owns the barbershop [~~holds a Class A barber certificate; (2) the applicant has practiced barbering for at least 12 months~~]; and
- (2) [~~(3)~~] the shop meets the minimum health standards for barbershops set by the commission [~~board~~] and all other commission rules [~~of the board~~].

SECTION 2.16. Sections 1601.304(b) and (c), Occupations Code, are amended to read as follows:

(b) An applicant for a manicurist specialty shop permit must submit:

- (1) an application that includes:

(A) the shop's address;

(B) the legal description of the premises for which the permit is sought;

and

(C) any other information required by the department [~~board~~]; and

(2) the required [~~an~~] inspection fee [~~in an amount not to exceed \$50~~].

(c) As soon as practicable after receipt of the application and fee, the department [~~board~~] shall issue a temporary manicurist specialty shop permit to the applicant. The applicant may operate the applicant's shop under the temporary permit until a permanent permit is issued.

SECTION 2.17. Section 1601.305, Occupations Code, is amended to read as follows:

Sec. 1601.305. ISSUANCE OF MANICURIST SPECIALTY SHOP PERMIT. The department [~~board~~] shall issue a permanent manicurist specialty shop permit to an applicant if:

(1) the applicant holds a manicurist license; and

(2) the shop meets the minimum health standards for manicurist specialty shops set by the commission [~~board~~], as determined by a department [~~board~~] inspection under Section 1603.103, and any other requirements imposed by commission [~~board~~] rule.

SECTION 2.18. Section 1601.309, Occupations Code, is amended to read as follows:

Sec. 1601.309. PRACTICE BY COSMETOLOGIST AT SPECIALTY SHOP PROHIBITED. A person who holds a license, permit, or certificate issued by the department under Chapter 1602 [~~Texas Cosmetology Commission~~] may not practice under that authority at a specialty shop regulated under this chapter.

SECTION 2.19. Section 1601.352, Occupations Code, is amended to read as follows:

Sec. 1601.352. APPLICATION FOR BARBER SCHOOL PERMIT. (a) An applicant for a barber school permit must demonstrate to the department [~~board~~] that the school meets the requirements of this subchapter for issuance of a permit.

(b) Before issuing a barber school permit, the department [~~board~~] must determine that the applicant is financially sound and capable of fulfilling the applicant's commitments for training.

SECTION 2.20. Section 1601.353, Occupations Code, is amended to read as follows:

Sec. 1601.353. REQUIRED FACILITIES AND EQUIPMENT. (a) The department [~~board~~] may not approve an application for a permit for a barber school that provides training leading to issuance of a Class A barber certificate unless the school has:

(1) an adequate school site housed in a substantial building of permanent construction containing at least 2,800 square feet of floor space, divided into:

(A) a senior department;

(B) a junior department;

(C) a class theory room;

(D) a supply room;

(E) an office space;

(F) a dressing and cloak room; and

(G) two sanitary, modern, separate restrooms, each equipped with one commode and one of which is also equipped with a urinal;

(2) a hard-surface floor-covering of tile or other suitable material;

(3) at least 20 modern barber chairs, including a cabinet and mirror for each chair;

(4) a lavatory behind every two barber chairs;

(5) a liquid sterilizer for each barber chair;

(6) an adequate number of latherers, vibrators, and hair dryers for student use;

(7) adequate lighting for each room;

(8) at least 20 classroom chairs, a blackboard, anatomical charts of the head, neck, and face, and one barber chair in the class theory room;

(9) a library with library facilities available to students containing at least one medical dictionary and a standard work on human anatomy;

(10) adequate drinking fountain facilities, with at least one for each floor;

(11) adequate toilet facilities for the students; and

(12) adequate fire-fighting equipment.

(b) An applicant for a barber school permit must submit to the department ~~[board]~~:

(1) a detailed drawing and chart of the proposed physical layout of the school, showing the departments, floor space, equipment, lights, and outlets;

(2) photographs of the proposed site for the school, including the interior and exterior of the building, rooms, and departments;

(3) a detailed copy of the training program;

(4) a copy of the catalogue and promotional literature of the school;

(5) a copy of the building lease or proposed building lease if the building is not owned by the school;

(6) a sworn statement showing the ownership of the school; and

(7) the required [a] permit fee ~~[not to exceed \$1,000]~~.

SECTION 2.21. Section 1601.354, Occupations Code, is amended to read as follows:

Sec. 1601.354. PREREQUISITES FOR GRADUATION. (a) The department ~~[board]~~ may not approve an application for a barber school permit unless the school requires as a prerequisite for graduation the following hours of instruction:

(1) for a barber technician, 300 hours of instruction completed in a course of not less than eight weeks;

(2) for a Class A barber, 1,500 hours of instruction completed in a course of not less than nine months, at least 800 hours of which is in the actual practice of cutting hair as a primary service;

(3) for a manicurist, 600 hours of instruction completed in a course of not less than 16 weeks; and

(4) for a teacher, 1,000 hours of instruction completed in a course of not less than six months.

(b) If a barber school offers a refresher course, the course must require at least 300 hours of instruction. The commission ~~[board]~~ by rule shall set the curriculum for a refresher course.

SECTION 2.22. Section 1601.355, Occupations Code, is amended to read as follows:

Sec. 1601.355. SUPERVISION AND TEACHING REQUIREMENTS. (a) The department ~~[board]~~ may not approve an application for a permit for a barber school that provides training leading to issuance of a Class A barber certificate unless the school is under the direct supervision and control of a Class A barber certificate holder who presents evidence of at least five years' experience as a practicing barber.

(b) Each barber school for which a permit is sought must have at least one teacher who has a teacher's certificate and is capable and qualified to teach to the students the required curriculum of the school. In addition to satisfying other department ~~[board]~~ requirements, the teacher must demonstrate to the department ~~[board]~~:

(1) through a written and practical examination an ability to teach the curriculum; and

(2) that the teacher is qualified to teach and:

(A) has had at least six months' experience as a teacher in an approved school in this state or in another state approved by the department ~~[board]~~; or

(B) has completed 1,000 hours of instruction in a postgraduate course as a student teacher in a department-approved ~~[board-approved]~~ barber school in this state.

SECTION 2.23. Sections 1601.3571(a) and (b), Occupations Code, are amended to read as follows:

(a) If on January 1 of any year the amount in the barber school tuition protection account is less than \$25,000, the department ~~[board]~~ shall collect a fee from each barber school during that year by applying a percentage to the school's renewal fee at a rate that will bring the balance of the account to \$25,000.

(b) The comptroller shall invest the account in the same manner as other state funds. Sufficient money from the account shall be appropriated to the department ~~[board]~~ for the purpose of refunding unused tuition if a barber school ceases operation before its course of instruction is complete. The department ~~[board]~~ shall administer claims made against the account.

SECTION 2.24. Section 1601.402(c), Occupations Code, is amended to read as follows:

(c) The department ~~[board]~~ shall issue a renewal certificate or license on receipt of a renewal application in the form prescribed by the department ~~[board]~~, accompanied by a renewal fee in an amount equal to the original certificate or license fee ~~[but not to exceed \$100]~~.

SECTION 2.25. The heading to Section 1601.404, Occupations Code, is amended to read as follows:

Sec. 1601.404. ~~[RENEWAL OR]~~ REINSTATEMENT OF EXPIRED CERTIFICATE OR LICENSE BY RETIREE.

SECTION 2.26. Section 1601.404(c), Occupations Code, is amended to read as follows:

(c) A Class A barber or license holder who retires from practice and whose certificate or license has been expired for more than five years may qualify for a new certificate or license by applying to the department ~~[board]~~ and by:

(1) making a proper showing to the department ~~[board]~~, supported by a personal affidavit;

(2) paying the required ~~[an]~~ examination fee ~~[not to exceed \$100]~~;

(3) passing a satisfactory examination conducted by the department ~~[board]~~;

and

(4) paying the fee for an original certificate or license.

SECTION 2.27. Section 1601.405, Occupations Code, is amended to read as follows:

Sec. 1601.405. RENEWAL WHILE IN ARMED FORCES. (a) The department ~~[board]~~ may not require a Class A barber, barber technician, teacher, or manicurist who is serving on active duty in the United States armed forces to renew the person's certificate or license.

(b) The department ~~[board]~~ shall issue a renewal certificate or license on application and payment of the required ~~[a]~~ renewal fee not later than the 90th day after the date the person is released or discharged from active duty in the armed forces. ~~[The renewal fee is:~~

~~(1) \$10 if the application and payment are made during the period beginning November 1 of an odd-numbered year and ending October 31 of the following year; or~~

~~(2) \$5 if the application and payment are made during the period beginning November 1 of an even-numbered year and ending October 31 of the following year.]~~

SECTION 2.28. Section 1601.406, Occupations Code, is amended to read as follows:

Sec. 1601.406. RENEWAL OF BARBERSHOP OR SPECIALTY SHOP PERMIT. (a) A barbershop permit or specialty shop permit expires on the second anniversary of the date of issuance ~~[on July 1 of each odd-numbered year]~~.

(b) A barbershop permit holder may renew the permit by paying the required ~~[a]~~ renewal fee ~~[not to exceed \$70]~~.

(c) A specialty shop permit holder may renew the permit by submitting to the department ~~[board]~~ a renewal application accompanied by the required ~~[a]~~ renewal fee ~~[not to exceed \$50]~~.

SECTION 2.29. Section 1601.407, Occupations Code, is amended to read as follows:

Sec. 1601.407. RENEWAL OF BARBER SCHOOL PERMIT. (a) A barber school permit expires on the first anniversary ~~[September 1]~~ of the date of issuance ~~[each year]~~.

(b) A barber school may renew its permit by paying the required ~~[a]~~ renewal fee ~~[not to exceed \$300]~~.

SECTION 2.30. Section 1601.452, Occupations Code, is amended to read as follows:

Sec. 1601.452. DISPLAY OF SANITATION RULES. Each barbershop or specialty shop shall post in the shop a copy of the commission's sanitation ~~[board's]~~ rules ~~[adopted under Section 1601.152]~~.

SECTION 2.31. Section 1601.453, Occupations Code, is amended to read as follows:

Sec. 1601.453. LOCATION OF PRACTICE. A person licensed by the department [~~board~~] may practice barbering only at a location for which the department [~~board~~] has issued a barbershop permit, specialty shop permit, or barber school permit.

SECTION 2.32. Section 1601.454, Occupations Code, is amended to read as follows:

Sec. 1601.454. PRACTICE AT FACILITY LICENSED OR PERMITTED AS BARBER AND COSMETOLOGIST FACILITY [~~BY BOARD AND TEXAS COSMETOLOGY COMMISSION~~]. (a) The commission [~~board~~] may not adopt rules to restrict or prohibit practice by a Class A barber or manicurist in a facility solely because the facility is licensed or permitted by [~~both~~] the department under both this chapter and Chapter 1602 [~~board and the Texas Cosmetology Commission~~].

(b) If a facility has a license or permit under both this chapter and Chapter 1602 [~~the board and the Texas Cosmetology Commission license or permit the same facility~~], the commission [~~board~~] may not adopt rules requiring separate treatment of the barbers and cosmetologists practicing in the facility or of their customers, including separate:

- (1) work areas for barbers and cosmetologists;
- (2) waiting areas for customers of the barbers and cosmetologists; or
- (3) restrooms for the barbers and cosmetologists practicing in the facility or

for their customers.

SECTION 2.33. Section 1601.501, Occupations Code, is amended to read as follows:

Sec. 1601.501. DISPLAY OF SHOP [~~BARBERSHOP~~] PERMIT. A barbershop or specialty shop permit holder must display the permit in a conspicuous place in the shop for which the permit is issued.

SECTION 2.34. Section 1601.552, Occupations Code, is amended to read as follows:

Sec. 1601.552. DISPLAY OF SANITATION RULES. Each barber school shall post in the school a copy of the commission's sanitation [~~board's~~] rules [~~adopted under Section 1601.152~~].

SECTION 2.35. Section 1601.554, Occupations Code, is amended to read as follows:

Sec. 1601.554. CHANGE OF BARBER SCHOOL OWNERSHIP OR LOCATION. (a) If a barber school changes ownership, the department [~~board~~] must be notified of the change not later than the 10th day before the date the change takes effect.

(b) A barber school may not change the location of the school unless the school obtains approval from the department [~~board~~] before the change by showing that the proposed location meets the requirements of Subchapter H for issuance of a permit to the school.

SECTION 2.36. Section 1601.556, Occupations Code, is amended to read as follows:

Sec. 1601.556. INFORMATION PROVIDED TO PROSPECTIVE STUDENT. The holder of a barber school permit shall furnish each prospective student with:

- (1) a course outline;
- (2) a schedule of the tuition and other fees assessed;
- (3) the school's refund policy required under Section 1601.563;
- (4) the school's grading policy and rules relating to incomplete grades;
- (5) the school's rules of operation and conduct, including rules relating to absences;
- (6) the department's ~~[board's]~~ name, mailing address, and telephone number for the purpose of directing complaints to the department ~~[board]~~; and
- (7) the current rates of job placement and employment of students who complete a course of training.

SECTION 2.37. Section 1601.557, Occupations Code, is amended to read as follows:

Sec. 1601.557. COURSE LENGTH AND CURRICULUM CONTENT. (a) A barber school shall submit to the department ~~[board]~~ for approval the course length and curriculum content for a course offered by the school. The course length and curriculum content shall be designed to reasonably ensure that a student develops the job skills and knowledge necessary for employment. The school may not implement a course length or curriculum content unless it is approved by the department ~~[board]~~.

(b) Before issuing or renewing a permit under this chapter, the department ~~[board]~~ shall require a school to account for all course lengths and curriculum contents.

SECTION 2.38. Section 1601.559(b), Occupations Code, is amended to read as follows:

(b) The department ~~[board]~~ may inspect a school's attendance record book at any time.

SECTION 2.39. Section 1601.560(a), Occupations Code, is amended to read as follows:

(a) In addition to the teacher required by Section 1601.355(b), a barber school that provides training leading to issuance of a Class A barber certificate shall have at least one qualified instructor, holding a Class A certificate, for every 25 ~~[20]~~ students on the school's premises ~~[for instruction in practical work]~~. A teacher may serve as an instructor in practical work in addition to holding a position as a theory teacher.

SECTION 2.40. Section 1601.561, Occupations Code, is amended to read as follows:

Sec. 1601.561. REPORTS TO DEPARTMENT ~~[BOARD]~~. (a) A barber school shall maintain ~~[submit]~~ a monthly progress report ~~[to the board]~~ regarding each student attending the school. The report must certify the daily attendance record of each student and the number of credit hours earned by each student during the previous month.

(b) On a student's completion of a prescribed course of instruction, the school shall notify ~~[certify to]~~ the department ~~[board]~~ that the student has completed the required number of hours and is eligible to take the appropriate examination.

(c) A barber school permit holder shall furnish to the department ~~[board]~~:

(1) the current course completion rates of students who attend a course of instruction offered by the school; and

(2) job placement rates and employment rates of students who complete a course of instruction.

SECTION 2.41. Section 1601.566(d), Occupations Code, is amended to read as follows:

(d) The department [~~board~~] may exempt a school from the payment of interest if the school makes a good faith effort to refund the tuition but is unable to locate the student. The school shall provide to the department [~~board~~] on request documentation of the school's effort to locate the student.

SECTION 2.42. Section 1601.603, Occupations Code, is amended to read as follows:

Sec. 1601.603. DENIAL OF PERMIT; SUIT. (a) If the department [~~board~~] denies an application for a barber school permit, the school may request in writing the reasons for the refusal.

(b) If the barber school meets the requirements for issuance of the permit and shows that the requirements of this chapter have been met, and the department [~~board~~] refuses to issue the permit, the school may file suit in a district court in Travis County to require the department [~~board~~] to issue the permit.

(c) A suit under Subsection (b) must be filed not later than the 20th day after the date of the department's [~~board's~~] final order denying issuance of the permit, if registered notice of the order is mailed or it is otherwise shown that the school had notice of the order not later than the 10th day after the date the department [~~board~~] entered the order.

SECTION 2.43. Section 1601.604(a), Occupations Code, is amended to read as follows:

(a) The commission [~~board~~] shall suspend or revoke the permit of a barber school that directly or indirectly violates this chapter.

SECTION 2.44. Section 1601.605, Occupations Code, is amended to read as follows:

Sec. 1601.605. PROBATION FOR ALTERING COURSE LENGTH. The commission [~~board~~] shall place on probation a barber school that alters a course length below or above industry standards until the school:

(1) provides justification for the alteration; or

(2) adjusts the course length to meet industry standards.

SECTION 2.45. Sections 1601.606(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) If the department [~~board~~] has reasonable cause to believe that a barber school has violated this chapter or a rule adopted under this chapter, the department [~~board~~] may:

(1) order a peer review of the school; or

(2) suspend the admission of students to the school.

(b) The peer review shall be conducted by a peer review team consisting of knowledgeable persons selected by the department [~~board~~]. The department [~~board~~] shall attempt to provide a balance on a peer review team between members assigned to the team who are from this state and members who are from other states.

(c) The peer review team shall provide the department ~~[board]~~ with an objective assessment of the school's curriculum content and its application.

SECTION 2.46. Section 1601.653(a), Occupations Code, is amended to read as follows:

(a) A person commits an offense if the person is a barber inspector or other department ~~[board]~~ employee and the person sells barber supplies or engages in a business, other than barbering, that deals directly with a barber, barbershop, specialty shop, or barber school.

ARTICLE 3. REGULATION OF COSMETOLOGY

SECTION 3.01. Section 1602.001, Occupations Code, is amended to read as follows:

Sec. 1602.001. GENERAL DEFINITIONS. In this chapter:

(1) "Board" means the Advisory Board on Cosmetology.

(2) "Commission" means the Texas ~~[Cosmetology]~~ Commission of Licensing and Regulation.

(3) "Department" means the Texas Department of Licensing and Regulation.

(4) "Executive director" means the executive director of the department.

(5) ~~(2)~~ "Public school" includes a public high school, a public junior college, or any other nonprofit tax-exempt institution that conducts a cosmetology program.

SECTION 3.02. The heading to Subchapter B, Chapter 1602, Occupations Code, is amended to read as follows:

SUBCHAPTER B. ADVISORY BOARD ON [TEXAS] COSMETOLOGY [COMMISSION]

SECTION 3.03. The heading to Section 1602.051, Occupations Code, is amended to read as follows:

Sec. 1602.051. BOARD [COMMISSION]; MEMBERSHIP.

SECTION 3.04. Sections 1602.051(a) and (b), Occupations Code, are amended to read as follows:

(a) The Advisory Board on [Texas] Cosmetology [Commission] consists of five ~~[six]~~ members appointed by the presiding officer of the commission, with the commission's approval, ~~[governor with the advice and consent of the senate]~~ as follows:

(1) one member who holds a license for a beauty shop that is part of a chain of beauty shops ~~[license]~~;

(2) one member who holds a license for a beauty shop that is not part of a chain of beauty shops;

(3) one member who holds a private beauty culture school license; and

(4) ~~(3)~~ two members who each hold an operator license; ~~and~~

~~(4) two members who represent the public.~~

(b) The associate commissioner for occupational education and technology of the Texas Education Agency or the associate commissioner's authorized representative shall serve as an ex officio member of the commission without ~~[with]~~ voting privileges.

SECTION 3.05. Sections 1602.055(a) and (c), Occupations Code, are amended to read as follows:

(a) Members of the board ~~[commission]~~ serve staggered six-year terms, with the terms of one or two members expiring on the same date ~~[December 31 of]~~ each odd-numbered year.

(c) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, ~~[governor]~~ shall appoint a replacement to fill the unexpired term.

SECTION 3.06. The heading to Section 1602.058, Occupations Code, is amended to read as follows:

Sec. 1602.058. PRESIDING OFFICER~~[-COMMITTEES]~~.

SECTION 3.07. Section 1602.058(a), Occupations Code, is amended to read as follows:

~~[(a)]~~ The presiding officer of the commission, with the commission's approval, ~~[governor]~~ shall designate one member of the commission as presiding officer to serve in that capacity for a two-year term ~~[at the pleasure of the governor]~~.

SECTION 3.08. Subchapter B, Chapter 1602, Occupations Code, is amended by adding Section 1602.060 to read as follows:

Sec. 1602.060. BOARD DUTIES. (a) The board shall advise the commission and the department on:

(1) education and curricula for applicants;

(2) the content of examinations;

(3) proposed rules and standards on technical issues related to cosmetology;

and

(4) other issues affecting cosmetology.

(b) The board shall respond to questions from the department and the commission regarding cosmetology.

SECTION 3.09. The heading to Subchapter D, Chapter 1602, Occupations Code, is amended to read as follows:

SUBCHAPTER D. ADDITIONAL POWERS AND DUTIES
RELATED TO COSMETOLOGY

SECTION 3.10. Sections 1602.153(a) and (b), Occupations Code, are amended to read as follows:

(a) The department ~~[commission]~~ may request and, if necessary, compel by subpoena:

(1) the attendance of a witness for examination under oath; and

(2) the production for inspection and copying of records and other evidence relevant to the investigation of an alleged violation of this chapter.

(b) If a person fails to comply with a subpoena issued under this section, the department ~~[commission]~~, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the department ~~[commission]~~ may be held.

SECTION 3.11. Section 1602.251(c), Occupations Code, is amended to read as follows:

(c) A person licensed by the department ~~[commission]~~ may practice cosmetology only at a facility operated by a person holding a beauty shop license, private beauty culture school license, or other license issued by the department ~~[commission]~~.

SECTION 3.12. Section 1602.258(b), Occupations Code, is amended to read as follows:

(b) To be eligible for a specialty certificate, an applicant must:

(1) be at least 17 years of age;

(2) have obtained a high school diploma or the equivalent of a high school diploma or have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training; and

(3) have the necessary requisites as determined by the department ~~[commission]~~ in the particular specialty for which certification is sought, including training through a commission-approved training program.

SECTION 3.13. Sections 1602.266(a) and (b), Occupations Code, are amended to read as follows:

(a) The department ~~[commission]~~ shall require a student enrolled in a school of cosmetology in this state to hold a permit stating the student's name and the name of the school. The permit shall be displayed in a reasonable manner at the school.

(b) The department ~~[commission]~~ shall issue a student permit to an applicant who submits an application to the department ~~[commission]~~ for a student permit accompanied by the required fee.

SECTION 3.14. Section 1602.267(b), Occupations Code, is amended to read as follows:

(b) The department ~~[commission]~~ shall issue a shampoo apprentice permit to an applicant who[-

~~(1)] is at least 16 years of age[-and~~

~~(2) submits a certificate of health as required by Section 1602.253].~~

SECTION 3.15. Section 1602.302(b), Occupations Code, is amended to read as follows:

(b) An application for a beauty shop license must be accompanied by the required inspection fee and:

(1) be on a form prescribed by the department ~~[commission]~~;

(2) contain proof of the particular requisites for a beauty shop established by the commission; and

(3) be verified by the applicant.

SECTION 3.16. Sections 1602.303(b) and (c), Occupations Code, are amended to read as follows:

(b) An application for a private beauty culture school license must be accompanied by the required license fee and inspection fee and:

(1) be on a form prescribed by the department ~~[commission]~~;

(2) be verified by the applicant;

(3) contain a detailed floor plan of the school building divided into two separate areas, one area for instruction in theory and one area for clinic work; and

(4) contain a statement that the building:

(A) is fireproof;

(B) is of permanent construction;
(C) contains a minimum of 3,500 square feet of floor space;
(D) has separate restrooms for male and female students; and
(E) contains, or will contain before classes begin, the equipment established by commission rule as sufficient to properly instruct a minimum of 50 students.

(c) The applicant is entitled to a private beauty culture school license if:

(1) the department ~~[commission]~~ determines that the applicant is financially sound and capable of fulfilling the school's commitments for training;

(2) the applicant's facilities pass an inspection conducted by the department under Section 1603.103 ~~[commission]~~; and

(3) the applicant has not committed an act that constitutes a ground for denial of a license.

SECTION 3.17. Section 1602.305(b), Occupations Code, is amended to read as follows:

(b) An application for a specialty shop license must be accompanied by the required inspection fee and:

(1) be on a form prescribed by the department ~~[commission]~~;

(2) contain proof of the particular requisites for a specialty shop as established by the commission; and

(3) be verified by the applicant.

SECTION 3.18. Section 1602.306(b), Occupations Code, is amended to read as follows:

(b) An application for a booth rental license must:

(1) be on a form prescribed by the department ~~[commission]~~;

(2) contain information as required by commission rule; and

(3) be verified by the applicant.

SECTION 3.19. The heading to Section 1602.352, Occupations Code, is amended to read as follows:

Sec. 1602.352. REQUIREMENT FOR FIRST ~~[PROCEDURE FOR]~~
RENEWAL OF LICENSE ~~[OR REINSTATEMENT]~~.

SECTION 3.20. Subchapter H, Chapter 1602, Occupations Code, is amended by adding Section 1602.353 to read as follows:

Sec. 1602.353. INACTIVE STATUS. (a) Not later than the 10th day before the expiration date of a certificate or license issued under this chapter, the certificate or license holder may place the certificate or license on inactive status by:

(1) submitting an application for inactive status to the department on a form prescribed by the department; and

(2) paying the required fee.

(b) Except as provided by Subsection (e), a person whose certificate or license is on inactive status is not required to complete continuing education required under this chapter.

(c) A person whose certificate or license is on inactive status may reapply for inactive status before the expiration date of the certificate or license. The person must pay the required fee.

(d) A license holder may not employ a person on inactive status.

(e) A person on inactive status may return the certificate or license to active status by:

(1) applying to the department for active status on a form prescribed by the department;

(2) paying the required fee; and

(3) providing evidence satisfactory to the department that the person has completed the number of hours of continuing education that would otherwise have been required for a renewal of an active license for the preceding two-year license period.

(f) The commission may set fees and adopt rules to implement this section.

SECTION 3.21. Section 1602.405, Occupations Code, is amended to read as follows:

Sec. 1602.405. PRACTICE AT FACILITY LICENSED OR PERMITTED AS BARBER AND COSMETOLOGIST FACILITY ~~[BY COMMISSION AND STATE BOARD OF BARBER EXAMINERS]~~. (a) The commission may not adopt rules to restrict or prohibit practice by a cosmetologist in a facility solely because the facility is licensed or permitted by [both] the department under both this chapter and Chapter 1601 ~~[commission and the State Board of Barber Examiners]~~.

(b) If a facility has a license or permit under both this chapter and Chapter 1601 ~~[the commission and the State Board of Barber Examiners license the same facility]~~, the commission may not adopt rules requiring separate treatment of the barbers and cosmetologists practicing in the facility or of their customers, including separate:

(1) work areas for barbers and cosmetologists;

(2) waiting areas for customers of the barbers and cosmetologists; or

(3) restrooms for the barbers and cosmetologists practicing in the facility or for their customers.

SECTION 3.22. Section 1602.451(a), Occupations Code, is amended to read as follows:

(a) The holder of a private beauty culture school license shall:

(1) maintain a sanitary establishment;

(2) maintain on its staff and on duty during business hours one full-time licensed instructor for each 25 students in attendance;

(3) maintain a daily record of students' attendance;

(4) establish regular class and instruction hours and grades;

(5) require a school term of not less than nine months and not less than 1,500 hours instruction for a complete course in cosmetology;

(6) require a school term of not less than 600 hours instruction for a complete course in manicuring;

(7) hold examinations before issuing diplomas;

(8) maintain a copy of the school's curriculum in a conspicuous place and verify that the curriculum is being followed;

(9) publish in the school's catalogue and enrollment contract a description of the refund policy required under Section 1602.458; and

(10) ~~[submit to the executive director the name of each student within 10 days after the date the student enrolls in the school and notify the executive director of the withdrawal or graduation of a student not later than the 10th day after the date the student withdraws or graduates; and~~

~~[(1)]~~ provide the department ~~[commission]~~ with information on:

(A) the current course completion rates of students who attend a course of instruction offered by the school; and

(B) job placement rates and employment rates of students who complete the course of instruction.

SECTION 3.23. Section 1602.452, Occupations Code, is amended to read as follows:

Sec. 1602.452. INFORMATION PROVIDED TO PROSPECTIVE STUDENT. The holder of a private beauty culture school license shall furnish each prospective student with:

(1) a course outline;

(2) a schedule of the tuition and other fees assessed;

(3) the refund policy required under Section 1602.458;

(4) the school grading policy and rules relating to incomplete grades;

(5) the school rules of operation and conduct, including rules relating to absences;

(6) the name, mailing address, and telephone number of the department ~~[commission]~~ for the purpose of directing complaints to the department ~~[commission]~~; and

(7) the current rates of job placement and employment of students who complete a course of training.

SECTION 3.24. Section 1602.453(c), Occupations Code, is amended to read as follows:

(c) Before issuing or renewing a license under this chapter, the department ~~[commission]~~ shall require a school to account for each course length and curriculum content.

SECTION 3.25. Section 1602.454, Occupations Code, is amended to read as follows:

Sec. 1602.454. STUDENT RECORD. A private beauty culture school shall ~~notify [send to] the department [commission a certified copy of a student's record, indicating all course hours completed by the student and whether the agreed tuition has been paid,]~~ when a ~~[the]~~ student~~[-~~

~~[(1)]~~ graduates from a course of training offered by the school and is eligible to take the appropriate examination~~[-or~~

~~[(2)] withdraws or transfers from a course of training without completion of the training].~~

SECTION 3.26. Section 1602.460(d), Occupations Code, is amended to read as follows:

(d) The department ~~[commission]~~ may exempt a school from the payment of interest if the school makes a good faith effort to refund the tuition but is unable to locate the student. The school shall provide to the department ~~[commission]~~ on request documentation of the effort to locate the student.

SECTION 3.27. Section 1602.463(a), Occupations Code, is amended to read as follows:

(a) If a private beauty culture school closes, the department [~~commission~~] shall attempt to arrange for students enrolled in the closed school to attend another private beauty culture school.

SECTION 3.28. Sections 1602.464(a) and (b), Occupations Code, are amended to read as follows:

(a) If on January 1 of any year the amount in the private beauty culture school tuition protection account is less than \$200,000, the department [~~commission~~] shall collect a fee from each private beauty culture school during that year by applying a percentage to the school's renewal fee at a rate that will bring the balance of the account to \$200,000.

(b) The comptroller shall invest the account in the same manner as other state funds. Sufficient money from the account shall be appropriated to the department [~~commission~~] for the purpose described by Section 1602.463. The department [~~commission~~] shall administer claims made against the account.

SECTION 3.29. Sections 1602.465(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) If the department [~~commission~~] has reasonable cause to believe that a private beauty culture school has violated this chapter or a rule adopted under this chapter, the department [~~commission~~] may:

- (1) order a peer review of the school; or
- (2) suspend the admission of students to the school.

(b) The peer review shall be conducted by a peer review team consisting of knowledgeable persons selected by the department [~~commission~~]. The department [~~commission~~] shall attempt to provide a balance on each team between members assigned to the team who are from this state and those who are from other states.

(c) The team shall provide the department [~~commission~~] with an objective assessment of the content of the school's curriculum and its application.

ARTICLE 4. CONFORMING AMENDMENTS

SECTION 4.01. Section 232.002, Family Code, is amended to read as follows:

Sec. 232.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. The following are licensing authorities subject to this chapter:

- (1) Department of Agriculture;
- (2) [~~Texas Commission on Alcohol and Drug Abuse;~~
(3) Texas Alcoholic Beverage Commission;
- (3) [(4)] Texas Appraiser Licensing and Certification Board;
- (4) [(5)] Texas Board of Architectural Examiners;
- (5) [(6)] ~~State Board of Barber Examiners;~~
(6) [(7)] Texas Board of Chiropractic Examiners;
- (6) [(8)] Comptroller of Public Accounts;
- (7) [(9)] ~~Texas Cosmetology Commission;~~
(8) [(10)] Court Reporters Certification Board;
- (8) [(11)] State Board of Dental Examiners;
- (9) [(12)] Texas State Board of Examiners of Dietitians;
- (10) [(13)] Texas Funeral Service Commission;

- (11) ~~(14)~~ ~~Texas~~ Department of State Health Services ~~[Health]~~;
- (12) ~~(15)~~ ~~Texas~~ Department of Aging and Disability ~~[Human]~~ Services;
- (13) ~~(16)~~ Texas Board of Professional Land Surveying;
- (14) ~~(17)~~ Texas Department of Licensing and Regulation;
- (15) ~~(18)~~ Texas State Board of Examiners of Marriage and Family

Therapists;

- (16) ~~(19)~~ Texas State Board of Medical Examiners;
- (17) ~~(20)~~ Midwifery Board;
- (18) ~~(21)~~ Texas Commission on Environmental Quality;
- (19) ~~(22)~~ Board of Nurse Examiners;
- (20) ~~(23)~~ Texas Board of Occupational Therapy Examiners;
- (21) ~~(24)~~ Texas Optometry Board;
- (22) ~~(25)~~ Parks and Wildlife Department;
- (23) ~~(26)~~ Texas State Board of Examiners of Perfusionists;
- (24) ~~(27)~~ Texas State Board of Pharmacy;
- (25) ~~(28)~~ Texas Board of Physical Therapy Examiners;
- (26) ~~(29)~~ Texas State Board of Plumbing Examiners;
- (27) ~~(30)~~ Texas State Board of Podiatric Medical Examiners;
- (28) ~~(31)~~ Polygraph Examiners Board;
- (29) ~~(32)~~ Texas ~~[Commission on]~~ Private Security Board;
- (30) ~~(33)~~ Texas State Board of Examiners of Professional Counselors;
- (31) ~~(34)~~ Texas Board of Professional Engineers;
- (32) ~~(35)~~ Department of Family and Protective ~~[and Regulatory]~~ Services;
- (33) ~~(36)~~ Texas State Board of Examiners of Psychologists;
- (34) ~~(37)~~ Texas State Board of Public Accountancy;
- (35) ~~(38)~~ Department of Public Safety of the State of Texas;
- (36) ~~(39)~~ Public Utility Commission of Texas;
- (37) ~~(40)~~ Railroad Commission of Texas;
- (38) ~~(41)~~ Texas Real Estate Commission;
- (39) ~~(42)~~ State Bar of Texas;
- (40) ~~(43)~~ Texas State Board of Social Worker Examiners;
- (41) ~~(44)~~ State Board of Examiners for Speech-Language Pathology and

Audiology;

- (42) ~~(45)~~ Texas Structural Pest Control Board;
- (43) ~~(46)~~ Board of Tax Professional Examiners;
- (44) ~~(47)~~ Secretary of State;
- (45) ~~(48)~~ Supreme Court of Texas;
- (46) ~~(49)~~ Texas Transportation Commission;
- (47) ~~(50)~~ State Board of Veterinary Medical Examiners;
- (48) ~~(51)~~ Texas Ethics Commission;
- (49) ~~(52)~~ Advisory Board of Athletic Trainers;
- (50) ~~(53)~~ State Committee of Examiners in the Fitting and Dispensing of

Hearing Instruments;

- (51) ~~(54)~~ Texas Board of Licensure for Professional Medical Physicists;
- (52) ~~(55)~~ Texas Department of Insurance;
- (53) ~~(56)~~ Texas Board of Orthotics and Prosthetics;

- (54) ~~[(57)]~~ savings and loan commissioner;
- (55) ~~[(58)]~~ Texas Juvenile Probation Commission; and
- (56) ~~[(59)]~~ Texas Lottery Commission under Chapter 466, Government

Code.

SECTION 4.02. Section 411.122(d), Government Code, is amended to read as follows:

(d) The following state agencies are subject to this section:

- (1) Texas Appraiser Licensing and Certification Board;
- (2) Texas Board of Architectural Examiners;
- (3) ~~[State Board of Barber Examiners;~~
- ~~[(4)]~~ Texas Board of Chiropractic Examiners;
- ~~[(4)]~~ ~~[(5)]~~ ~~Texas Cosmetology Commission;~~
- ~~[(6)]~~ State Board of Dental Examiners;
- ~~[(7)]~~ Texas Board of Professional Engineers;
- ~~[(8)]~~ Texas Funeral Service Commission;
- ~~[(9)]~~ Texas Board of Professional Geoscientists;
- ~~[(10)]~~ ~~Texas~~ Department of State Health Services, except as provided by

Section 411.110, and agencies attached to the department, including:

- (A) Texas State Board of Examiners of Dietitians;
- (B) Texas State Board of Examiners of Marriage and Family Therapists;
- (C) Midwifery Board;
- (D) Texas State Board of Examiners of Perfusionists;
- (E) Texas State Board of Examiners of Professional Counselors;
- (F) Texas State Board of Social Worker Examiners;
- (G) State Board of Examiners for Speech-Language Pathology and

Audiology;

- (H) Advisory Board of Athletic Trainers;
- (I) State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments;
- (J) Texas Board of Licensure for Professional Medical Physicists; and
- (K) Texas Board of Orthotics and Prosthetics;

(9) ~~[(11)]~~ Texas Board of Professional Land Surveying;

(10) ~~[(12)]~~ Texas Department of Licensing and Regulation, except as provided by Section 411.093;

- (11) ~~[(13)]~~ Texas Commission on Environmental Quality;
- (12) ~~[(14)]~~ Texas Board of Occupational Therapy Examiners;
- (13) ~~[(15)]~~ Texas Optometry Board;
- (14) ~~[(16)]~~ Texas State Board of Pharmacy;
- (15) ~~[(17)]~~ Texas Board of Physical Therapy Examiners;
- (16) ~~[(18)]~~ Texas State Board of Plumbing Examiners;
- (17) ~~[(19)]~~ Texas State Board of Podiatric Medical Examiners;
- (18) ~~[(20)]~~ Polygraph Examiners Board;
- (19) ~~[(21)]~~ Texas State Board of Examiners of Psychologists;
- (20) ~~[(22)]~~ Texas Real Estate Commission;
- (21) ~~[(23)]~~ Board of Tax Professional Examiners;
- (22) ~~[(24)]~~ Texas Department of Transportation;

- ~~(23) [(25)]~~ State Board of Veterinary Medical Examiners;
~~(24) [(26)]~~ Board of Vocational Nurse Examiners;
~~[(27)]~~ Texas Department of Housing and Community Affairs;
~~(25) [(28)]~~ secretary of state;
~~(26) [(29)]~~ state fire marshal;
~~(27) [(30)]~~ Texas Education Agency; and
~~(28) [(31)]~~ Department of Agriculture.

SECTION 4.03. Section 2054.352(a), Government Code, is amended to read as follows:

(a) The following licensing entities shall participate in the system established under Section 2054.353~~[- as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001]:~~

- ~~(1) [State Board of Barber Examiners;~~
~~[(2)]~~ Texas Board of Chiropractic Examiners;
~~(2) [(3)]~~ Texas Cosmetology Commission;
~~[(4)]~~ Court Reporters Certification Board;
~~(3) [(5)]~~ State Board of Dental Examiners;
~~(4) [(6)]~~ Texas Funeral Service Commission;
~~(5) [(7)]~~ Texas Board of Professional Land Surveying;
~~(6) [(8)]~~ Texas State Board of Medical Examiners;
~~(7) [(9)]~~ Board of Nurse Examiners;
~~(8) [(10)]~~ Texas Optometry Board;
~~(9) [(11)]~~ Texas Structural Pest Control Board;
~~(10) [(12)]~~ Texas State Board of Pharmacy;
~~(11) [(13)]~~ Executive Council of Physical Therapy and Occupational
Therapy Examiners;
~~(12) [(14)]~~ Texas State Board of Plumbing Examiners;
~~(13) [(15)]~~ Texas State Board of Podiatric Medical Examiners;
~~(14) [(16)]~~ Board of Tax Professional Examiners;
~~(15) [(17)]~~ Polygraph Examiners Board;
~~(16) [(18)]~~ Texas State Board of Examiners of Psychologists;
~~(17) [(19)]~~ State Board of Veterinary Medical Examiners;
~~(18) [(20)]~~ Texas Real Estate Commission;
~~(19) [(21)]~~ Texas Appraiser Licensing and Certification Board;
~~(20) [(22)]~~ Texas Department of Licensing and Regulation;
~~(21) [(23)]~~ Texas State Board of Public Accountancy;
~~(22) [(24)]~~ State Board for Educator Certification;
~~(23) [(25)]~~ Texas Board of Professional Engineers;
~~(24) [(26)]~~ Texas Department of State Health Services;
~~(25) [(27)]~~ Texas Board of Architectural Examiners;
~~(26) [(28)]~~ Texas Racing Commission;
~~(27) [(29)]~~ Commission on Law Enforcement Officer Standards and
Education; and
~~(28) [(30)]~~ Texas ~~[Commission on]~~ Private Security Board.

ARTICLE 5. REPEALER

SECTION 5.01. The following laws are repealed:

- (1) Subchapters C, D, E, and O, Chapter 1601, Occupations Code;
- (2) Subchapters C, E, and K, Chapter 1602, Occupations Code; and
- (3) Sections 1601.004, 1601.051(b) and (c), 1601.052, 1601.053, 1601.054, 1601.056, 1601.057, 1601.252, 1601.261, 1601.262, 1601.263, 1601.264, 1601.266, 1601.267, 1601.302, 1601.310, 1601.311, 1601.356, 1601.401, 1601.402(d), 1601.403, 1601.404(a) and (b), 1601.408, 1601.502, 1601.503, 1601.506, 1601.601, 1601.651, 1601.654, 1602.004, 1602.051(c), 1602.052, 1602.053, 1602.054, 1602.055(b), 1602.056, 1602.057, 1602.058(b), 1602.059, 1602.151, 1602.152, 1602.154, 1602.155, 1602.252, 1602.253, as amended by Chapter 1282, Acts of the 78th Legislature, Regular Session, 2003, 1602.259, 1602.260, 1602.261, 1602.263, 1602.264, 1602.265, 1602.303(d), 1602.304(b), 1602.351(d), 1602.352(b)-(f), 1602.407, 1602.551, 1602.552, 1602.553, and 1602.555, Occupations Code.

ARTICLE 6. TRANSITION AND EFFECTIVE DATE

SECTION 6.01. (a) The State Board of Barber Examiners and the Texas Cosmetology Commission are abolished but continue in existence until January 1, 2006, for the sole purpose of transferring obligations, property, full-time equivalent positions, rights, powers, and duties to the Texas Department of Licensing and Regulation. The Texas Department of Licensing and Regulation assumes all of the obligations, property, full-time equivalent positions, rights, powers, and duties of the State Board of Barber Examiners and the Texas Cosmetology Commission, as they exist immediately before the effective date of this Act. All unexpended funds appropriated to the State Board of Barber Examiners and the Texas Cosmetology Commission are transferred to the Texas Department of Licensing and Regulation. The transfer of the obligations, property, full-time equivalent positions, rights, powers, and duties of the State Board of Barber Examiners and the Texas Cosmetology Commission to the Texas Department of Licensing and Regulation must be completed not later than January 1, 2006.

(b) All rules of the State Board of Barber Examiners and the Texas Cosmetology Commission are continued in effect as rules of the Texas Commission of Licensing and Regulation until superseded by a rule of the Texas Commission of Licensing and Regulation. A certificate, license, or permit issued by the State Board of Barber Examiners or the Texas Cosmetology Commission is continued in effect as provided by the law in effect immediately before the effective date of this Act. A complaint, investigation, contested case, or other proceeding pending on the effective date of this Act is continued without change in status after the effective date of this Act. An inspection or other activity conducted by the State Board of Barber Examiners or the Texas Cosmetology Commission is considered to be an inspection or activity conducted by the Texas Department of Licensing and Regulation, including an inspection or other activity conducted for purposes of allowing a school, shop, or facility to continue to operate under Section 1603.103, Occupations Code, as added by this Act.

(c) A reference in another law or an administrative rule to the State Board of Barber Examiners or the Texas Cosmetology Commission means the Texas Department of Licensing and Regulation.

SECTION 6.02. (a) The State Board of Barber Examiners and the Texas Cosmetology Commission, in cooperation with and at the direction of the Texas Department of Licensing and Regulation shall complete all necessary computer programming and other tasks to ensure that the agency numbers assigned by the comptroller to the board and the commission are not necessary for any fiscal year after 2005, except to complete earlier fiscal year revenue and expenditure transactions and reporting. The number assigned by the comptroller to the Texas Department of Licensing and Regulation shall be used to record transactions related to the regulation of barbering and cosmetology beginning in fiscal year 2006.

(b) Not later than July 1, 2005, the State Board of Barber Examiners and the Texas Cosmetology Commission shall request that the comptroller grant the Texas Department of Licensing and Regulation inquiry-only security access to the uniform statewide accounting system, the state property accounting system, the uniform statewide payroll system, and the human resources information system for their respective agencies. The Texas Department of Licensing and Regulation and the comptroller may coordinate implementation of this section.

(c) Not later than July 15, 2005, the Texas Department of Licensing and Regulation shall provide to the State Board of Barber Examiners and the Texas Cosmetology Commission detailed information regarding those agencies' responsibilities under Subsection (a) of this section.

SECTION 6.03. Sections 1602.353 and 1603.352, Occupations Code, as added by this Act, take effect January 1, 2006.

SECTION 6.04. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2005.

(b) Section 6.02 of this Act takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Section 6.02 does not take effect.

Floor Amendment No. 1

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

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

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

(1) treating a person's hair by:

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

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

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

- (2) weaving ~~[or braiding]~~ a person's hair;
- (3) shampooing and conditioning a person's hair;
- (4) servicing a person's wig or artificial hairpiece on a person's head or on a block after the initial retail sale and servicing in any manner listed in Subdivision (1);
- (5) treating a person's mustache or beard by arranging, beautifying, coloring, processing, styling, or trimming;
- (6) cleansing, stimulating, or massaging a person's scalp, face, neck, or arms:
 - (A) by hand or by using a device, apparatus, or appliance; and
 - (B) with or without the use of any cosmetic preparation, antiseptic, tonic, lotion, or cream;
- (7) beautifying a person's face, neck, or arms using a cosmetic preparation, antiseptic, tonic, lotion, powder, oil, clay, cream, or appliance;
- (8) administering facial treatments;
- (9) removing superfluous hair from a person's body using depilatories or mechanical tweezers;
- (10) treating a person's nails by:
 - (A) cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring; or
 - (B) attaching false nails; or
- (11) massaging, cleansing, treating, or beautifying a person's hands or feet.

Floor Amendment No. 1 on Third Reading

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

- (1) In amended Section 1602.002, Occupations Code, between "COSMETOLOGY." and "In", insert "(a)".
- (2) In amended Section 1602.002(2), Occupations Code, strike "~~[or braiding]~~" and substitute "or braiding".
- (3) At the end of amended Section 1602.002, Occupations Code, insert the following:
 - (b) The commission by rule may amend the definition of cosmetology to eliminate a service included in that definition under Subsection (a).

The amendments were read.

Senator Whitmire moved to concur in the House amendments to **SB 411**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE ON HOUSE BILL 1773

Senator Brimer, on behalf of Senator Averitt, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1773** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer, Senator Armbrister in Chair, asked if there were any motions to instruct the conference committee on **HB 1773** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Averitt, Chair; Madla, Brimer, Deuell, and Gallegos.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 167 ADOPTED

Senator Jackson called from the President's table the Conference Committee Report on **HB 167**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2005.

On motion of Senator Jackson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE ON HOUSE BILL 2233

Senator Duncan called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2233** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2233** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Duncan, Chair; Ogden, Seliger, Zaffirini, and Armbrister.

SENATE RESOLUTION 1047

Senator Ellis offered the following resolution:

BE IT RESOLVED by the Senate of the 79th Texas Legislature, Regular Session, 2005, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08, to enable the conference committee appointed to resolve the differences on **HB 1830** (notice provided for the establishment of municipal management districts) to consider and take action on the following matter:

Senate Rule 12.03(1) is suspended to permit the committee to change the text of added Subsection (d), Section 313.006, Government Code, to read as follows:

(d) The person is not required to mail notice to a person who owns real property in the proposed district if the property cannot be subject to an assessment by the district.

Explanation: The change is necessary to conform Subsection (d), Section 313.006 to the other subsections.

SR 1047 was read and was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1830 ADOPTED

Senator Ellis called from the President's table the Conference Committee Report on **HB 1830**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2005.

On motion of Senator Ellis, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE BILL 1668 WITH HOUSE AMENDMENTS

Senator Estes called **SB 1668**, from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Floor Amendment No. 1 on Third Reading

Amend **SB 1668** on third reading by adding the following new appropriately numbered SECTION and renumbering the remaining SECTIONS:

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

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

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

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

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

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

Floor Amendment No. 2 on Third Reading

Amend **SB 1668** on third reading as follows:

(1) In SECTION 1 of the bill (engrossed version, page 1, lines 5-23), by inserting the following after line 23 and renumbering all subsequent sections accordingly:

SECTION 2. Chapter 11, Utilities Code, is amended by adding Section 11.0042 to read as follows:

Sec. 11.0042. DEFINITION OF AFFILIATE. (a) The term "person" or "corporation" as used in the definition of "affiliate" provided by Section 11.003(2) does not include:

(1) a broker or dealer registered under the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), as amended;

(2) a bank or insurance company as defined under the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), as amended;

(3) an investment adviser registered under state law or the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-20 et seq.);

(4) an investment company registered under the Investment Company Act of 1940 (15 U.S.C. Section 80a-51 et seq.); or

(5) an employee benefit plan, pension fund, endowment fund, or other similar entity that may, directly or indirectly, own, hold, or control five percent or more of the voting securities of a public utility or the parent corporation of a public utility if the entity did not acquire the voting securities:

(A) for the purpose of or with the effect of changing or influencing the control of the issuer of the securities; or

(B) in connection with or as a participant in any transaction that changes or influences the control of the issuer of the securities.

(b) For the purpose of determining whether a person is an affiliate under Section 11.006(a)(3), the term "person" does not include an entity that may, directly or indirectly, own, hold, or control the voting securities of a public utility or the parent corporation of a public utility if the entity did not acquire the voting securities:

(1) for the purpose of or with the effect of changing or influencing the control of the issuer of the securities; or

(2) in connection with or as a participant in any transaction that changes or influences the control of the issuer of the securities.

(c) A report filed by an entity described by Subsection (a)(5) or (b) with the Securities and Exchange Commission is conclusive evidence of the entity's intent if the report confirms that the voting securities were not acquired:

(1) for the purpose of or with the effect of changing or influencing the control of the issuer of the securities; or

(2) in connection with or as a participant in any transaction that changes or influences the control of the issuer of the securities.

The amendments were read.

Senator Estes moved to concur in the House amendments to **SB 1668**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 905 ADOPTED

Senator Williams called from the President's table the Conference Committee Report on **HB 905**. The Conference Committee Report was filed with the Senate on Thursday, May 26, 2005.

On motion of Senator Williams, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE BILL 60 WITH HOUSE AMENDMENTS

Senator Lucio called **SB 60** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 60** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the representation of certain defendants in capital cases and to the punishment for a capital felony or other felony punishable by a term of imprisonment exceeding 99 years.

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

SECTION 1. Section 12.31, Penal Code, is amended to read as follows:

Sec. 12.31. CAPITAL FELONY. (a) An individual adjudged guilty of a capital felony in a case in which the state seeks the death penalty shall be punished by imprisonment in the institutional division for life without parole or by death. An individual adjudged guilty of a capital felony in a case in which the state does not seek the death penalty shall be punished by imprisonment in the institutional division for life without parole.

(b) In a capital felony trial in which the state seeks the death penalty, prospective jurors shall be informed that a sentence of life imprisonment without parole or death is mandatory on conviction of a capital felony. In a capital felony trial in which the state does not seek the death penalty, prospective jurors shall be informed that the state is not seeking the death penalty and that a sentence of life imprisonment without parole is mandatory on conviction of the capital felony.

SECTION 2. Section 12.32(a), Penal Code, is amended to read as follows:

(a) An individual adjudged guilty of a felony of the first degree shall be punished by imprisonment in the institutional division for ~~[life or for]~~ any term of not more than 99 years or less than 5 years.

SECTION 3. Sections 12.42(c) and (d), Penal Code, are amended to read as follows:

(c)(1) Except as provided by Subdivision (2), if it is shown on the trial of a first-degree felony that the defendant has been once before convicted of a felony, on conviction he shall be punished by imprisonment in the institutional division of the Texas Department of Criminal Justice for ~~[life, or for]~~ any term of not more than 99 years or less than 15 years. In addition to imprisonment, an individual may be punished by a fine not to exceed \$10,000.

(2) A defendant shall be punished by imprisonment in the institutional division for a term of 99 years ~~[life]~~ if:

(A) the defendant is convicted of an offense:

(i) under Section 22.021 or 22.011, Penal Code;

(ii) under Section 20.04(a)(4), Penal Code, if the defendant committed the offense with the intent to violate or abuse the victim sexually; or

(iii) under Section 30.02, Penal Code, punishable under Subsection (d) of that section, if the defendant committed the offense with the intent to commit a felony described by Subparagraph (i) or (ii) or a felony under Section 21.11 or 22.011, Penal Code; and

(B) the defendant has been previously convicted of an offense:

(i) under Section 43.25 or 43.26, Penal Code, or an offense under Section 43.23, Penal Code, punishable under Subsection (h) of that section;

(ii) under Section 21.11, 22.011, 22.021, or 25.02, Penal Code;

(iii) under Section 20.04(a)(4), Penal Code, if the defendant committed the offense with the intent to violate or abuse the victim sexually;

(iv) under Section 30.02, Penal Code, punishable under Subsection (d) of that section, if the defendant committed the offense with the intent to commit a felony described by Subparagraph (ii) or (iii); or

(v) under the laws of another state containing elements that are substantially similar to the elements of an offense listed in Subparagraph (i), (ii), (iii), or (iv).

(d) If it is shown on the trial of a felony offense other than a state jail felony punishable under Section 12.35(a) that the defendant has previously been finally convicted of two felony offenses, and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final, on conviction he shall be punished by imprisonment in the institutional division of the Texas Department of Criminal Justice for ~~[life, or for]~~ any term of not more than 99 years or less than 25 years.

SECTION 4. Section 508.046, Government Code, is amended to read as follows:

Sec. 508.046. EXTRAORDINARY VOTE REQUIRED. To release on parole an inmate who was convicted of ~~[a capital felony or]~~ an offense under Section 21.11(a)(1) or 22.021, Penal Code, or who is required under Section 508.145(c) to serve 35 calendar years before becoming eligible for release on parole, all members of the board must vote on the release on parole of the inmate, and at least two-thirds of the members must vote in favor of the release on parole. A member of the board may not vote on the release unless the member first receives a copy of a written report from the department on the probability that the inmate would commit an offense after being released on parole.

SECTION 5. Sections 508.145(a) and (c), Government Code, are amended to read as follows:

(a) An inmate under sentence of death or serving a sentence of life imprisonment without parole is not eligible for release on parole.

(c) An inmate serving a ~~[life]~~ sentence under Section 12.42(c)(2), Penal Code, is not eligible for release on parole until the actual calendar time the inmate has served, without consideration of good conduct time, equals 35 calendar years.

SECTION 6. Section 1, Article 37.071, Code of Criminal Procedure, is amended to read as follows:

Sec. 1. If a defendant is found guilty in a capital felony case in which the state does not seek the death penalty, the judge shall sentence the defendant to life imprisonment without parole.

SECTION 7. Section 2(a)(1), Article 37.071, Code of Criminal Procedure, is amended to read as follows:

(1) If a defendant is tried for a capital offense in which the state seeks the death penalty, on a finding that the defendant is guilty of a capital offense, the court shall conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to death or life imprisonment without parole. The proceeding shall be conducted in the trial court and, except as provided by Article 44.29(c) of this code, before the trial jury as soon as practicable. In the proceeding, evidence may be presented by the state and the defendant or the defendant's counsel as to any matter that the court deems relevant to sentence, including evidence of the defendant's background or character or the circumstances of the offense that mitigates against the imposition of the death penalty. This subdivision shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the State of Texas. The state and the defendant or the defendant's counsel shall be permitted to present argument for or against sentence of death. The court, the attorney representing the state, the defendant, or the defendant's counsel may not inform a juror or a prospective juror of the effect of a failure of a jury to agree on issues submitted under Subsection (c) or (e) ~~[of this article]~~.

SECTION 8. Section 2(e), Article 37.071, Code of Criminal Procedure, is amended to read as follows:

(e)(1) The court shall instruct the jury that if the jury returns an affirmative finding to each issue submitted under Subsection (b) ~~[of this article]~~, it shall answer the following issue:

Whether, taking into consideration all of the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant, there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed.

(2) The court~~[-on the written request of the attorney representing the defendant,]~~ shall:

(A) instruct the jury that if the jury answers that a circumstance or circumstances warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed, the court will sentence the defendant to imprisonment in the institutional division of the Texas Department of Criminal Justice for life without parole; and

(B) charge the jury that a defendant sentenced to confinement for life without parole under this article is ineligible for release from the department on parole. [in writing as follows:

~~["Under the law applicable in this case, if the defendant is sentenced to imprisonment in the institutional division of the Texas Department of Criminal Justice for life, the defendant will become eligible for release on parole, but not until the actual time served by the defendant equals 40 years, without consideration of any good conduct time. It cannot accurately be predicted how the parole laws might be applied to this defendant if the defendant is sentenced to a term of imprisonment for~~

~~life because the application of those laws will depend on decisions made by prison and parole authorities, but eligibility for parole does not guarantee that parole will be granted."]~~

SECTION 9. Section 2(g), Article 37.071, Code of Criminal Procedure, is amended to read as follows:

(g) If the jury returns an affirmative finding on each issue submitted under Subsection (b) ~~[of this article]~~ and a negative finding on an issue submitted under Subsection (e)(1) ~~[of this article]~~, the court shall sentence the defendant to death. If the jury returns a negative finding on any issue submitted under Subsection (b) ~~[of this article]~~ or an affirmative finding on an issue submitted under Subsection (e)(1) ~~[of this article]~~ or is unable to answer any issue submitted under Subsection (b) or (e) ~~[of this article]~~, the court shall sentence the defendant to confinement in the institutional division of the Texas Department of Criminal Justice for life imprisonment without parole.

SECTION 10. Articles 44.251(a) and (b), Code of Criminal Procedure, are amended to read as follows:

(a) The court of criminal appeals shall reform a sentence of death to a sentence of confinement in the institutional division of the Texas Department of Criminal Justice for life without parole if the court finds that there is insufficient evidence to support an affirmative answer to an issue submitted to the jury under Section 2(b), Article 37.071, ~~[or Section 3(b), Article 37.0711,]~~ of this code or a negative answer to an issue submitted to a jury under Section 2(e)(1), Article 37.071, ~~[or Section 3(e), Article 37.0711,]~~ of this code.

(b) The court of criminal appeals shall reform a sentence of death to a sentence of confinement in the institutional division of the Texas Department of Criminal Justice for life without parole if:

(1) the court finds reversible error that affects the punishment stage of the trial other than a finding of insufficient evidence under Subsection (a) of this article; and

(2) within 30 days after the date on which the opinion is handed down, the date the court disposes of a timely request for rehearing, or the date that the United States Supreme Court disposes of a timely filed petition for writ of certiorari, whichever date is later, the prosecuting attorney files a motion requesting that the sentence be reformed to confinement for life without parole.

SECTION 11. Chapter 44, Code of Criminal Procedure, is amended by adding Article 44.2511 to read as follows:

Art. 44.2511. REFORMATION OF SENTENCE IN CAPITAL CASE FOR OFFENSE COMMITTED BEFORE SEPTEMBER 1, 1991. (a) This article applies to the reformation of a sentence of death in a capital case for an offense committed before September 1, 1991. For purposes of this subsection, an offense is committed before September 1, 1991, if every element of the offense occurred before that date.

(b) The court of criminal appeals shall reform a sentence of death to a sentence of confinement in the institutional division of the Texas Department of Criminal Justice for life if the court finds that there is insufficient evidence to support an

affirmative answer to an issue submitted to the jury under Section 3(b), Article 37.0711, of this code or a negative answer to an issue submitted to a jury under Section 3(e), Article 37.0711, of this code.

(c) The court of criminal appeals shall reform a sentence of death to a sentence of confinement in the institutional division of the Texas Department of Criminal Justice for life if:

(1) the court finds reversible error that affects the punishment stage of the trial other than a finding of insufficient evidence under Subsection (b) of this article; and

(2) within 30 days after the date on which the opinion is handed down, the date the court disposes of a timely request for rehearing, or the date that the United States Supreme Court disposes of a timely filed petition for writ of certiorari, whichever date is later, the prosecuting attorney files a motion requesting that the sentence be reformed to confinement for life.

(d) If the court of criminal appeals finds reversible error that affects the punishment stage of the trial only, as described by Subsection (c) of this article, and the prosecuting attorney does not file a motion for reformation of sentence in the period described by that subsection, the defendant shall receive a new sentencing trial in the manner required by Article 44.29(c) of this code.

SECTION 12. Article 44.29(c), Code of Criminal Procedure, is amended to read as follows:

(c) If any court sets aside or invalidates the sentence of a defendant convicted of an offense under Section 19.03, Penal Code, ~~[and sentenced to death]~~ on the basis of any error affecting punishment only, the court shall not set the conviction aside but rather shall commence a new punishment hearing under Article 37.071 or Article 37.0711 of this code, as appropriate, as if a finding of guilt had been returned. The court shall empanel a jury for the sentencing stage of the trial in the same manner as a jury is to be empaneled by the court in other trials before the court for offenses under Section 19.03, Penal Code. At the new punishment hearing, the court shall permit both the state and the defendant to introduce evidence as permitted by Article 37.071 or Article 37.0711 of this code.

SECTION 13. Sections 481.112(e) and (f), Health and Safety Code, are amended to read as follows:

(e) An offense under Subsection (a) is punishable by imprisonment in the institutional division of the Texas Department of Criminal Justice for ~~[life or for]~~ a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(f) An offense under Subsection (a) is punishable by imprisonment in the institutional division of the Texas Department of Criminal Justice for ~~[life or for]~~ a term of not more than 99 years or less than 15 years, and a fine not to exceed \$250,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

SECTION 14. Section 481.112(b), Health and Safety Code, is amended to read as follows:

(b) An offense under this section is:

(1) a state jail felony if the number of abuse units of the controlled substance is fewer than 20;

(2) a felony of the second degree if the number of abuse units of the controlled substance is 20 or more but fewer than 80;

(3) a felony of the first degree if the number of abuse units of the controlled substance is 80 or more but fewer than 4,000; and

(4) punishable by imprisonment in the institutional division of the Texas Department of Criminal Justice for ~~[life or for]~~ a term of not more than 99 years or less than 15 years and a fine not to exceed \$250,000, if the number of abuse units of the controlled substance is 4,000 or more.

SECTION 15. Section 481.113(e), Health and Safety Code, is amended to read as follows:

(e) An offense under Subsection (a) is punishable by imprisonment in the institutional division of the Texas Department of Criminal Justice for ~~[life or for]~~ a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

SECTION 16. Section 481.114(e), Health and Safety Code, is amended to read as follows:

(e) An offense under Subsection (a) is punishable by imprisonment in the institutional division of the Texas Department of Criminal Justice for ~~[life or for]~~ a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including any adulterants or dilutants, 400 grams or more.

SECTION 17. Section 481.115(f), Health and Safety Code, is amended to read as follows:

(f) An offense under Subsection (a) is punishable by imprisonment in the institutional division of the Texas Department of Criminal Justice for ~~[life or for]~~ a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

SECTION 18. Section 481.1151(b), Health and Safety Code, is amended to read as follows:

(b) An offense under this section is:

(1) a state jail felony if the number of abuse units of the controlled substance is fewer than 20;

(2) a felony of the third degree if the number of abuse units of the controlled substance is 20 or more but fewer than 80;

(3) a felony of the second degree if the number of abuse units of the controlled substance is 80 or more but fewer than 4,000;

(4) a felony of the first degree if the number of abuse units of the controlled substance is 4,000 or more but fewer than 8,000; and

(5) punishable by imprisonment in the institutional division of the Texas Department of Criminal Justice for ~~[life or for]~~ a term of not more than 99 years or less than 15 years and a fine not to exceed \$250,000, if the number of abuse units of the controlled substance is 8,000 or more.

SECTION 19. Section 481.116(e), Health and Safety Code, is amended to read as follows:

(e) An offense under Subsection (a) is punishable by imprisonment in the institutional division of the Texas Department of Criminal Justice for ~~[life or for]~~ a term of not more than 99 years or less than five years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

SECTION 20. Section 481.117(e), Health and Safety Code, is amended to read as follows:

(e) An offense under Subsection (a) is punishable by imprisonment in the institutional division of the Texas Department of Criminal Justice for ~~[life or for]~~ a term of not more than 99 years or less than five years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

SECTION 21. Section 481.118(e), Health and Safety Code, is amended to read as follows:

(e) An offense under Subsection (a) is punishable by imprisonment in the institutional division of the Texas Department of Criminal Justice for ~~[life or for]~~ a term of not more than 99 years or less than five years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

SECTION 22. Section 481.120(b), Health and Safety Code, is amended to read as follows:

(b) An offense under Subsection (a) is:

(1) a Class B misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense does not receive remuneration for the marihuana;

(2) a Class A misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense receives remuneration for the marihuana;

(3) a state jail felony if the amount of marihuana delivered is five pounds or less but more than one-fourth ounce;

(4) a felony of the second degree if the amount of marihuana delivered is 50 pounds or less but more than five pounds;

(5) a felony of the first degree if the amount of marihuana delivered is 2,000 pounds or less but more than 50 pounds; and

(6) punishable by imprisonment in the institutional division of the Texas Department of Criminal Justice for ~~[life or for]~~ a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of marihuana delivered is more than 2,000 pounds.

SECTION 23. Section 508.145(b), Government Code, is repealed.

SECTION 24. Section 2(d), Article 11.071, Code of Criminal Procedure, is amended to read as follows:

(d) The court of criminal appeals shall adopt rules for the appointment of attorneys as counsel under this section and the convicting court may appoint an attorney as counsel under this section only if the appointment is approved by the court of criminal appeals in any manner provided by those rules. The rules must require that an attorney appointed as lead counsel under this section not have been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any criminal case.

SECTION 25. Article 26.052(d), Code of Criminal Procedure, is amended to read as follows:

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

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

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

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

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

(D) have at least five years of experience in criminal litigation;

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

(F) ~~(E)~~ have trial experience in:

(i) the use of and challenges to mental health or forensic expert witnesses; and

(ii) investigating and presenting mitigating evidence at the penalty phase of a death penalty trial; and

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

(3) The standards must require that an attorney appointed as lead appellate counsel in the direct appeal of a death penalty case have not been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any criminal case.

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

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

SECTION 26. The court of criminal appeals shall amend rules adopted under Section 2(d), Article 11.071, Code of Criminal Procedure, as necessary to comply with that section, as amended by this Act, not later than January 1, 2006.

SECTION 27. A local selection committee shall amend standards previously adopted by the committee to conform with the requirements of Article 26.052(d), Code of Criminal Procedure, as amended by this Act, not later than the 75th day after the effective date of this Act. An attorney appointed to a death penalty case on or after the 75th day after the effective date of this Act must meet the standards adopted in conformity with the amended Article 26.052(d). An attorney appointed to a death penalty case before the 75th day after the effective date of this Act is covered by the law in effect when the attorney was appointed, and the former law is continued in effect for that purpose.

SECTION 28. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 29. This Act takes effect September 1, 2005.

Floor Amendment No. 1

Amend **CSSB 60** (House committee printing) as follows:

- (1) Strike SECTIONS 2 and 3 of the bill (page 1, line 23, through page 3, line 26).
- (2) Strike SECTIONS 13-22 of the bill (page 10, line 10, through page 14, line 22).
- (3) Renumber remaining SECTIONS of the bill accordingly.

Floor Amendment No. 3

Amend **CSSB 60** (House committee printing) by striking SECTION 12 of the bill (page 9, line 22 through page 10, line 9) and renumbering subsequent SECTIONS accordingly.

Floor Amendment No. 4

Amend **CSSB 60** (House committee printing) as follows:

- (1) In SECTION 10 of the bill, strike amended Subsection (a), Article 44.251, Code of Criminal Procedure (page 7, lines 19-27), and substitute the following:

(a) The court of criminal appeals shall reform a sentence of death to a sentence of confinement in the institutional division of the Texas Department of Criminal Justice for life without parole if the court finds that there is legally insufficient evidence to support an affirmative answer to an issue submitted to the jury under Section 2(b), Article 37.071[~~— or Section 3(b), Article 37.0711, of this code or a negative answer to an issue submitted to a jury under Section 2(e), Article 37.071, or Section 3(e), Article 37.0711, of this code.~~].

(2) In SECTION 11 of the bill, strike added Subsection (b), Article 44.2511, Code of Criminal Procedure (page 8, line 23, through page 9, line 2), and substitute the following:

(b) The court of criminal appeals shall reform a sentence of death to a sentence of confinement in the institutional division of the Texas Department of Criminal Justice for life if the court finds that there is legally insufficient evidence to support an affirmative answer to an issue submitted to the jury under Section 3(b), Article 37.0711.

Floor Amendment No. 5

Amend **CSSB 60** (House committee printing) by adding an appropriately numbered SECTION to read as follows and by renumbering existing SECTIONS of the bill accordingly:

SECTION _____. Section 8.07(c), Penal Code, is amended to read as follows:

(c) No person may, in any case, be punished by death for an offense committed while the person ~~he~~ was younger than 18 ~~17~~ years.

Floor Amendment No. 6

Amend **CSSB 60** (committee printing) as follows:

(1) In SECTION 24 of the bill, at the end of amended Section 2(d), Article 11.071, Code of Criminal Procedure (page 15, line 8), strike "criminal" and substitute "capital".

(2) In SECTION 25 of the bill, in amended Subdivision (2), Article 26.052(d), Code of Criminal Procedure (page 15, line 15), between "case" and the colon, insert "or an attorney appointed as lead counsel in the direct appeal of a death penalty case".

(3) In SECTION 25 of the bill, in amended Paragraph (C), Subdivision (2), Article 26.052(d), Code of Criminal Procedure (page 15, line 22), strike "criminal" and substitute "capital".

(4) In SECTION 25 of the bill, strike proposed Subdivision (3), Article 26.052(d), Code of Criminal Procedure (page 16, lines 11-15), and renumber existing subdivisions of that article accordingly.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 60** on third reading by adding an appropriately numbered SECTION to read as follows and by renumbering existing SECTIONS accordingly:

SECTION _____. Subsections (a) and (f), Section 508.146, Government Code, are amended to read as follows:

(a) An inmate, other than an inmate who is serving a sentence of death or life without parole or an inmate who has a reportable conviction or adjudication under Chapter 62, Code of Criminal Procedure, may be released on medically recommended intensive supervision on a date designated by a parole panel described by Subsection (e), except that an inmate with an instant offense that is an offense described in Section 3g, Article 42.12, Code of Criminal Procedure, may only be considered if a medical condition of terminal illness or long-term care has been diagnosed, if:

(1) the Texas Correctional Office on Offenders with Medical or Mental Impairments, in cooperation with the Correctional Managed Health Care Committee, identifies the inmate as being elderly, physically disabled, mentally ill, terminally ill, or mentally retarded or having a condition requiring long-term care;

(2) the parole panel determines that, based on the inmate's condition and a medical evaluation, the inmate does not constitute a threat to public safety; and

(3) the Texas Correctional Office on Offenders with Medical or Mental Impairments, in cooperation with the pardons and paroles division, has prepared for the inmate a medically recommended intensive supervision plan that requires the inmate to submit to electronic monitoring, places the inmate on super-intensive supervision, or otherwise ensures appropriate supervision of the inmate.

(f) An inmate who is not a citizen of the United States, as defined by federal law, who is not under a sentence of death or life without parole, and who does not have a reportable conviction or adjudication under Chapter 62, Code of Criminal Procedure, or an instant offense described in Section 3g, Article 42.12, Code of Criminal Procedure, may be released to immigration authorities pending deportation on a date designated by a parole panel described by Subsection (e) if the parole panel determines that on release the inmate would be deported to another country and that the inmate does not constitute a threat to public safety in the other country or this country and is unlikely to reenter this country illegally.

The amendments were read.

Senator Lucio moved to concur in the House amendments to **SB 60**.

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Armbrister, Averitt, Barrientos, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Gallegos, Harris, Hinojosa, Janek, Lindsay, Lucio, Madla, Ogden, Seliger, Shapleigh, Staples, Van de Putte, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Estes, Fraser, Jackson, Nelson, Shapiro.

SENATE BILL 1290 WITH HOUSE AMENDMENT

Senator Wentworth called **SB 1290** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer, Senator Armbrister in Chair, laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 1290** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the sale or use of certain refrigerants.

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

SECTION 1. Section 1302.453, Occupations Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) It is an exception to the application of this section with respect to a purchase of a refrigerant or equipment containing a refrigerant in this state in violation of Section 1302.356 that the refrigerant or equipment is purchased for use only in a motor vehicle and that use is authorized by the United States Environmental Protection Agency.

(c) An offense under this section is a Class C misdemeanor.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

The amendment was read.

Senator Wentworth moved to concur in the House amendment to **SB 1290**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 1413 WITH HOUSE AMENDMENT

Senator Shapleigh called **SB 1413** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **SB 1413**, on page 2, at the end of line 13, by inserting "is owned by a county or, if not owned by a county, for which the owner applies to a county for brownfield assistance or certification and".

The amendment was read.

Senator Shapleigh moved to concur in the House amendment to **SB 1413**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1048 ADOPTED

Senator Seliger called from the President's table the Conference Committee Report on **HB 1048**. The Conference Committee Report was filed with the Senate on Thursday, May 26, 2005.

On motion of Senator Seliger, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2678 ADOPTED

Senator Seliger called from the President's table the Conference Committee Report on **HB 2678**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2005.

On motion of Senator Seliger, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 225 ADOPTED**

Senator Deuell called from the President's table the Conference Committee Report on **HB 225**. The Conference Committee Report was filed with the Senate on Tuesday, May 24, 2005.

On motion of Senator Deuell, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 283 ADOPTED**

Senator Zaffirini called from the President's table the Conference Committee Report on **HB 283**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2005.

On motion of Senator Zaffirini, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1641 ADOPTED**

Senator Lucio called from the President's table the Conference Committee Report on **SB 1641**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2005.

On motion of Senator Lucio, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE 2465 ADOPTED**

Senator Fraser called from the President's table the Conference Committee Report on **HB 2465**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2005.

On motion of Senator Fraser, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 872 ADOPTED**

Senator Nelson called from the President's table the Conference Committee Report on **SB 872**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2005.

On motion of Senator Nelson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE BILL 1173 WITH HOUSE AMENDMENT

Senator Carona called **SB 1173** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer, Senator Armbrister in Chair, laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **SB 1173** as follows:

On page 12, line 1, add the following and renumber accordingly:

SECTION 5. Section 711.009, Health and Safety Code, is amended by adding subsection (c) to read as follows:

(c) This section applies only to a cemetery located in a municipality with a population of 40,000 or more or in a county with a population of 290,000 or more.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 1173**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1358 ADOPTED**

Senator Carona called from the President's table the Conference Committee Report on **HB 1358**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2005.

On motion of Senator Carona, the Conference Committee Report was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of the Conference Committee Report.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 368 ADOPTED**

Senator Duncan called from the President's table the Conference Committee Report on **SB 368**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2005.

On motion of Senator Duncan, the Conference Committee Report was adopted by the following vote: Yeas 26, Nays 4, Present-not voting 1.

Yeas: Armbrister, Averitt, Brimer, Deuell, Duncan, Ellis, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Staples, Van de Putte, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Barrientos, Carona, Eltife, Shapleigh.

Present-not voting: Lindsay.

SENATE BILL 9 WITH HOUSE AMENDMENTS

Senator Staples called **SB 9** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 9** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to homeland security; providing a penalty.

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

SECTION 1. Chapter 2, Agriculture Code, is amended by adding Section 2.006 to read as follows:

Sec. 2.006. POLICY: PROTECTION OF STATE FROM CERTAIN PESTS AND DISEASES. (a) The agricultural policy of this state must recognize that it is of paramount importance to protect this state and the agriculture industry in this state against the intentional or unintentional introduction or dissemination of damaging plant and animal pests and diseases.

(b) The department, with the assistance of the Texas Animal Health Commission, shall pursue a policy of ensuring that the borders of this state are secure from shipments of potentially dangerous plant and animal pests and diseases.

SECTION 2. Section 71.0081, Agriculture Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) The department may enter into an agreement with a corporation or other private entity to provide goods or services for the establishment and operation of checkpoints or the performance of inspections under this section.

SECTION 3. Subchapter A, Chapter 71, Agriculture Code, is amended by adding Section 71.0082 to read as follows:

Sec. 71.0082. INSPECTIONS FOR CERTAIN PESTS AND DISEASES. (a) In addition to vehicle inspections authorized under Section 71.0081, the department and the Texas Animal Health Commission, under the direction of the department, shall jointly conduct road station and interstate shipment inspections as feasible at strategic points throughout this state and as determined to be appropriate by the department and the Texas Animal Health Commission, taking into consideration the significance of plant and animal inspections in proactively protecting this state's borders.

(b) The department may enter into an agreement with a corporation or other private entity to provide goods or services for the establishment and operation of checkpoints or the performance of inspections under this section.

SECTION 4. Section 161.048, Agriculture Code, is amended by adding Subsection (d-1) to read as follows:

(d-1) The commission may enter into an agreement with a corporation or other private entity to provide goods or services for the establishment and operation of checkpoints or the performance of inspections under this section.

SECTION 5. Section 418.004, Government Code, is amended by adding Subdivision (9) to read as follows:

(9) "Regional planning commission" means a regional planning commission, council of governments, or other regional planning agency created under Chapter 391, Local Government Code.

SECTION 6. Section 418.107(c), Government Code, is amended to read as follows:

(c) A political subdivision or regional planning commission may render aid to other political subdivisions or regional planning commissions under mutual aid agreements.

SECTION 7. Section 418.109(d), Government Code, is amended to read as follows:

(d) A municipality, county, emergency services district, fire protection agency, regional planning commission, organized volunteer group, or other emergency services entity may provide mutual aid assistance on request from another municipality, county, emergency services district, fire protection agency, regional planning commission, organized volunteer group, or other emergency services entity. The chief or highest ranking officer of the entity from which assistance is requested, with the approval and consent of the presiding officer of the governing body of that entity, may provide that assistance while acting in accordance with the policies, ordinances, and procedures established by the governing body of that entity and consistent with any mutual aid plans developed by the emergency management council.

SECTION 8. The heading to Subchapter B, Chapter 421, Government Code, is amended to read as follows:

SUBCHAPTER B. HOMELAND SECURITY [~~CRITICAL INFRASTRUCTURE PROTECTION~~] COUNCIL

SECTION 9. Sections 421.021(a) and (b), Government Code, are amended to read as follows:

(a) The Homeland Security [~~Critical Infrastructure Protection~~] Council is composed of the governor or the governor's designee and one representative of each of the following entities, appointed by the single statewide elected or appointed governing officer, ~~or~~ administrative head, or chair, as appropriate, of the entity:

- (1) Department of Agriculture;
- (2) office of the attorney general;
- (3) General Land Office;
- (4) Public Utility Commission of Texas;
- (5) ~~[Texas]~~ Department of State Health Services;
- (6) Department of Information Resources;
- (7) Department of Public Safety of the State of Texas;
- (8) division of emergency management of the office of the governor;
- (9) adjutant general's department [~~Texas National Guard~~];
- (10) Texas Commission on Environmental Quality;
- (11) Railroad Commission of Texas;
- (12) Texas Strategic Military Planning Commission; ~~and~~
- (13) Texas Department of Transportation;
- (14) Commission on State Emergency Communications;
- (15) Office of State-Federal Relations;
- (16) secretary of state;
- (17) Senate Committee on Transportation and Homeland Security;
- (18) House Committee on Defense Affairs and State-Federal Relations;
- (19) Texas Animal Health Commission;
- (20) Texas Association of Regional Councils;
- (21) Texas Commission on Law Enforcement Officer Standards and Education;
- (22) state fire marshal's office;

- (23) Texas Education Agency;
- (24) Texas Commission on Fire Protection;
- (25) Parks and Wildlife Department;
- (26) Texas Forest Service; and
- (27) Texas Water Development Board.

(b) To be eligible for appointment as a member of the council, a person must be directly involved in ~~the~~ policies, programs, or funding activities ~~[of the appointing agency, office, or division]~~ that are relevant to homeland security or infrastructure protection.

SECTION 10. Section 421.071, Government Code, is amended to read as follows:

Sec. 421.071. COOPERATION AND ASSISTANCE. A state or local agency that performs a homeland security activity or a nongovernmental entity that contracts with a state or local agency to perform a homeland security activity shall cooperate with and assist the office of the governor, the Homeland Security ~~[Critical Infrastructure Protection]~~ Council, the Texas Infrastructure Protection Communications Center, and the National Infrastructure Protection Center in the performance of their duties under this chapter and other state or federal law.

SECTION 11. Chapter 421, Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. GOVERNOR'S INTEROPERABLE RADIO
COMMUNICATIONS PROGRAM

Sec. 421.095. DEFINITIONS. In this subchapter:

(1) "First responder" means a public safety employee or volunteer whose duties include responding rapidly to an emergency. The term includes:

(A) a peace officer whose duties include responding rapidly to an emergency;

(B) fire protection personnel under Section 419.021;

(C) a volunteer firefighter who is:

(i) certified by the Texas Commission on Fire Protection; or

(ii) a member of an organized volunteer fire-fighting unit as described by Section 615.003; and

(D) an individual certified as emergency medical services personnel by the Department of State Health Services.

(2) "Infrastructure equipment" means the underlying permanent equipment required to establish interoperable communication between radio systems used by local, state, and federal agencies and first responders.

Sec. 421.096. INTEROPERABILITY OF RADIO SYSTEMS. The office of the governor shall:

(1) develop and administer a strategic plan to design and implement a statewide integrated public safety radio communications system that promotes interoperability within and between local, state, and federal agencies and first responders;

(2) develop and administer a plan in accordance with Subdivision (1) to purchase infrastructure equipment for state and local agencies and first responders;

(3) advise representatives of entities in this state that are involved in homeland security activities with respect to interoperability; and

(4) use appropriated money, including money from relevant federal homeland security grants, for the purposes of designing, implementing, and maintaining a statewide integrated public safety radio communications system.

Sec. 421.097. ASSISTANCE. The office of the governor may consult with a representative of an entity described by Section 421.096(3) to obtain assistance or information necessary for the performance of any duty under this subchapter.

Sec. 421.098. REPORT. Not later than September 1 of each year, the office of the governor shall provide to the legislature a report on the status of its duties under this subchapter.

SECTION 12. Chapter 421, Government Code, is amended by adding Subchapter Z to read as follows:

SUBCHAPTER Z. MISCELLANEOUS

Sec. 421.901. INTEROPERABILITY OF CRITICAL INFORMATION SYSTEMS. The office of the governor shall develop a plan for appropriate entities to use information systems that:

(1) employ underlying computer equipment and software required to establish interoperable communication between computer systems used by local, state, and federal agencies and first responders; and

(2) provide a single point of entry to disseminate information, applications, processes, and communications.

SECTION 13. Section 791.006, Government Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (d) to read as follows:

(a) If governmental units contract under this chapter to furnish or obtain ~~the~~ services of a fire department, such as training, fire suppression, or ambulance services, the governmental unit that would have been responsible for furnishing the services in the absence of the contract is responsible for any civil liability that arises from the furnishing of those services.

(a-1) Notwithstanding Subsection (a), if a municipality, county, rural fire prevention district, emergency services district, fire protection agency, regional planning commission, or joint board enters into a contract with a governmental unit under this chapter to furnish or obtain the services of a fire department, the parties to the contract may agree to assign responsibility for civil liability that arises from the furnishing or obtaining of services under the contract in any manner agreed to by the parties. To assign responsibility for civil liability under this subsection, the parties to the contract must assign responsibility in a written provision of the contract that specifically references this subsection and states that the assignment of liability is intended to be different than liability otherwise assigned under Subsection (a).

(d) Notwithstanding any other provision of this chapter, a contract under this chapter is not a joint enterprise for the purpose of assigning or determining liability.

SECTION 14. Subchapter B, Chapter 12, Health and Safety Code, is amended by adding Section 12.0128 to read as follows:

Sec. 12.0128. HEALTH ALERT NETWORK. The department shall include the Texas Association of Local Health Officials, the Texas Association of Community Health Centers, and the Texas Organization of Rural and Community Hospitals in the department's Texas Health Alert Network to the extent federal funds for bioterrorism preparedness are available for that purpose.

SECTION 15. Section 341.033, Health and Safety Code, is amended by adding Subsection (i) to read as follows:

(i) An owner, agent, manager, operator, or other person in charge of a public water supply system that furnishes water for public or private use or a wastewater system that provides wastewater services for public or private use shall maintain internal procedures to notify the commission immediately of the following events, if the event may negatively impact the production or delivery of safe and adequate drinking water:

(1) an unusual or unexplained unauthorized entry at property of the public water supply or wastewater system;

(2) an act of terrorism against the public water supply or wastewater system;

(3) an unauthorized attempt to probe for or gain access to proprietary information that supports the key activities of the public water supply or wastewater system;

(4) a theft of property that supports the key activities of the public water supply or wastewater system; or

(5) a natural disaster, accident, or act that results in damage to the public water supply or wastewater system.

SECTION 16. Section 30.05(b), Penal Code, is amended by adding Subdivision (7) to read as follows:

(7) "Critical infrastructure facility" means one of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders:

(A) a chemical manufacturing facility;

(B) a refinery;

(C) an electrical power generating facility, substation, switching station, electrical control center, or electrical transmission or distribution facility;

(D) a water intake structure, water treatment facility, wastewater treatment plant, or pump station;

(E) a natural gas transmission compressor station;

(F) a liquid natural gas terminal or storage facility;

(G) a telecommunications central switching office;

(H) a port, railroad switching yard, trucking terminal, or other freight transportation facility;

(I) a gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas; or

(J) a transmission facility used by a federally licensed radio or television station.

SECTION 17. Section 30.05, Penal Code, is amended by amending Subsection (d) and adding Subsections (g) and (h) to read as follows:

(d) An offense under Subsection (e) is a Class C misdemeanor unless it is committed in a habitation or unless the actor carries a deadly weapon on or about the actor's person during the commission of the offense, in which event it is a Class A misdemeanor. An offense under Subsection (a) is a Class B misdemeanor, except that the offense is a Class A misdemeanor if:

(1) the offense is committed:

(A) in a habitation or a shelter center; ~~or~~

(B) on a Superfund site; or

(C) on or in a critical infrastructure facility; or

(2) the actor carries a deadly weapon on or about his person during the commission of the offense.

(g) It is a defense to prosecution under this section that the actor entered a railroad switching yard or any part of a railroad switching yard and was at that time an employee or a representative of employees exercising a right under the Railway Labor Act (45 U.S.C. Section 151 et seq.).

(h) At the punishment stage of a trial in which the attorney representing the state seeks the increase in punishment provided by Subsection (d)(1)(C), the defendant may raise the issue as to whether the defendant entered or remained on or in a critical infrastructure facility as part of a peaceful or lawful assembly, including an attempt to exercise rights guaranteed by state or federal labor laws. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the increase in punishment provided by Subsection (d)(1)(C) does not apply.

SECTION 18. Section 411.0105, Government Code, is repealed.

SECTION 19. On the effective date of this Act:

(1) the Public Safety Radio Communications Council is abolished;

(2) the office of the governor replaces the Public Safety Radio Communications Council as the entity responsible for oversight of the development of a program related to the interoperability of radio communications;

(3) all property, including records, in the custody of the Department of Public Safety of the State of Texas that relates to the Public Safety Radio Communications Council or a program to promote the interoperability of radio communications becomes the property of the office of the governor and shall be made available to the office of the governor no later than December 1, 2005; and

(4) all funds appropriated by the legislature to the Department of Public Safety of the State of Texas for the purpose of providing administrative support to the Public Safety Radio Communications Council are transferred to the office of the governor.

SECTION 20. The head of each entity listed in Subdivision (9) and Subdivisions (14) through (27), Section 421.021(a), Government Code, as amended by this Act, shall appoint a representative to the Homeland Security Council, as required by that section, not later than December 1, 2005.

SECTION 21. (a) The change in law made by this Act to Section 791.006, Government Code, does not affect any civil liability for services furnished under an interlocal cooperation contract entered into before the effective date of this Act to furnish or obtain the services of a fire department.

(b) The former law is continued in effect for the purpose of determining liability, if any, for services furnished under an interlocal cooperation contract entered into before the effective date of this Act to furnish or obtain the services of a fire department.

SECTION 22. The change in law made by this Act to Section 30.05, Penal Code, applies only to an offense committed on or after September 1, 2005. An offense committed before September 1, 2005, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before September 1, 2005, if any element of the offense was committed before that date.

SECTION 23. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

Floor Amendment No. 1

Amend **CSSB 9** (House committee printing) as follows:

(1) In SECTION 11 of the bill, in added Section 421.095(1)(C)(i), Government Code (page 6, line 13), between "Protection" and the semicolon, insert "or by the State Firemen's and Fire Marshals' Association of Texas".

(2) In SECTION 13 of the bill, in added Subsection (a-1), Section 791.006, Government Code (page 8, line 16), strike "the services of a fire department" and substitute "fire or emergency services".

Floor Amendment No. 2

Amend **CSSB 9** (House committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION __. Section 421.026, Government Code, is amended to read as follows:

Sec. 421.026. REPORT. The council shall annually submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report stating:

(1) the council's progress in developing and coordinating a statewide critical infrastructure protection strategy;

(2) the status and funding of state programs designed to detect and deter homeland security emergencies, including the status and funding of counterterrorism efforts;

(3) recommendations on actions to reduce threats to homeland security, including threats related to terrorism; and

(4) recommendations for improving the alert, response, and recovery capabilities of state and local agencies.

SECTION __. Chapter 421, Government Code, is amended by adding Subchapter B-1 to read as follows:

SUBCHAPTER B-1. PERMANENT SPECIAL ADVISORY COMMITTEES

Sec. 421.041. FIRST RESPONDER ADVISORY COUNCIL. (a) The First Responder Advisory Council is a permanent special advisory committee created to advise the governor or the governor's designee on homeland security issues relevant to first responders, radio interoperability, the integration of statewide exercises for hazards, and the related use of available funding.

(b) The council is composed of:

(1) one representative for each of the following sectors of the state, appointed by the governor or the governor's designee:

(A) law enforcement;

(B) firefighters;

(C) private first responders; and

(D) emergency medical services; and

(2) other members, as determined by the governor or the governor's designee.

Sec. 421.042. PRIVATE SECTOR ADVISORY COUNCIL. (a) The Private Sector Advisory Council is a permanent special advisory committee created to advise the governor or the governor's designee on homeland security issues relevant to the private sector.

(b) The council is composed of:

(1) one representative of a private organization or entity for each of the following sectors of the state, each appointed by the governor or the governor's designee:

(A) agriculture and food;

(B) banking and finance;

(C) chemicals and hazardous materials;

(D) the defense industry;

(E) energy;

(F) emergency services;

(G) information technology;

(H) telecommunications;

(I) postal and shipping;

(J) public health;

(K) transportation;

(L) ports and waterways; and

(M) national monuments and icons; and

(2) other members, as determined by the governor or the governor's designee.

Sec. 421.043. ELIGIBILITY. (a) To be eligible for appointment as a member of a permanent special advisory committee created under this subchapter, a person must demonstrate experience in the sector that the person is under consideration to represent and be directly involved in related policies, programs, or funding activities that are relevant to homeland security or infrastructure protection.

(b) Each member of a permanent special advisory committee created under this subchapter serves at the will of the governor.

Sec. 421.044. COMPENSATION AND REIMBURSEMENT OF EXPENSES PROHIBITED. A person who is a member of a permanent special advisory committee created under this subchapter is not entitled to receive compensation from this state for service on the committee or travel expenses incurred by the person while conducting the business of the committee.

Sec. 421.045. DUTIES. Each permanent special advisory committee created under this subchapter shall advise the governor on:

(1) the development and coordination of a statewide critical infrastructure protection strategy;

(2) the implementation of the governor's homeland security strategy by state and local agencies and provide specific suggestions for helping those agencies implement the strategy;

(3) specific priorities related to the governor's homeland security strategy that the committee determines to be of significant importance to the statewide security of critical infrastructure; and

(4) other matters related to the planning, development, coordination, and implementation of initiatives to promote the governor's homeland security strategy.

SECTION __. Sections 421.072(a) and (c), Government Code, are amended to read as follows:

(a) The office of the governor shall:

(1) allocate available federal and state grants and other funding related to homeland security to state and local agencies and defense base development authorities created under Chapter 379B, Local Government Code, that perform homeland security activities;

(2) periodically review the grants and other funding for appropriateness and compliance; and

(3) designate state administering agencies to administer all grants and other funding to the state related to homeland security; and

(4) measure the effectiveness of the homeland security grants and other funding.

(c) A state or local agency or defense base development authority that receives a grant or other funding related to homeland security must provide an annual report to the office of the governor detailing:

(1) the ~~[agency's]~~ compliance of the agency or authority with the state homeland security strategy;

(2) any expenditures made using the funding;

(3) any programs developed or implemented using the funding; and

(4) the manner in which any expenditures made or programs developed or implemented have improved the ability of the agency or authority to detect, deter, respond to, and recover from a terrorist attack.

SECTION __. The governor shall make all required appointments to the First Responder Advisory Council and the Private Sector Advisory Council, in accordance with Subchapter B-1, Chapter 421, Government Code, as added by this Act, not later than December 1, 2005.

Floor Amendment No. 4

Amend **CSSB 9** (House committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter G, Chapter 756, Health and Safety Code, as added by Chapter 1082, Acts of the 78th Legislature, Regular Session, 2003, is amended by adding Section 756.106 to read as follows:

Sec. 756.106. SAFETY STANDARDS AND BEST PRACTICES. The Railroad Commission of Texas shall adopt and enforce safety standards and best practices, including those described by 49 U.S.C. Section 6105 et seq., relating to the prevention of damage by a person to a facility under the jurisdiction of the commission.

SECTION _____. The Railroad Commission of Texas shall adopt the safety standards and best practices required by Section 756.106, Health and Safety Code, as added by this Act, not later than June 1, 2007.

Floor Amendment No. 5

Amend **CSSB 9** as follows:

Insert the following appropriately numbered SECTION and renumber subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 752.006, Health and Safety Code, is repealed.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 9** (on third reading) as follows:

(1) In the section of the bill that amends Section 791.006, Government Code, in amended Section 791.006(a), strike "or ambulance services" and substitute "fire fighting, ambulance services, hazardous materials response services, fire and rescue services, or paramedic services".

(2) Strike the section of the bill that amends Section 421.026, Government Code, as added on 2nd Reading by Floor Amendment No. 2 by Corte, and renumber subsequent sections of the bill accordingly.

Floor Amendment No. 2 on Third Reading

Amend **CSSB 9** on third reading by adding the following section to the bill, appropriately numbered, and renumbering existing sections accordingly:

SECTION _____. Article 2.122, Code of Criminal Procedure, is amended by adding Subsection (g) to read as follows:

(g) In addition to the powers of arrest, search, and seizure under Subsection (a), a Special Agent of the Secret Service protecting a person described by 18 U.S.C. Section 3056(a) or investigating a threat against a person described by 18 U.S.C. Section 3056(a) has the powers of arrest, search, and seizure as to:

- (1) misdemeanor offenses under the laws of this state; and
- (2) any criminal offense under federal law.

The amendments were read.

Senator Staples moved to concur in the House amendments to **SB 9**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 1710 WITH HOUSE AMENDMENTS

Senator Staples called **SB 1710** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Floor Amendment No. 1

Amend **SB 1710** in SECTION 1 of the bill, in proposed Paragraph (A), Subdivision (2), Subsection (b), Section 382.018, Health and Safety Code (page 1, line 18), between "standards" and the semicolon, by inserting "and that does not contain any part of a city that does not meet national ambient air quality standards".

Floor Amendment No. 2

Amend **SB 1710** (House committee printing) as follows:

(1) In SECTION 1 of the bill, in amended Subsection (a), Section 382.018, Health and Safety Code (page 1, line 7), strike "The" and substitute "Except as provided by Subsections (b) and (d), the [The]".

(2) In SECTION 1 of the bill, after added Subsection (c), Section 382.018, Health and Safety Code (page 2, between lines 2 and 3), insert the following:

(d) The commission may not control or prohibit outdoor burning of waste consisting of trees, brush, grass, leaves, branch trimmings, or other plant growth if:

(1) the person burning the waste is doing so at a site:

(A) designated for consolidated burning of waste generated from specific residential properties;

(B) located in a county with a population of less than 50,000;

(C) located outside of a municipality; and

(D) supervised at the time of the burning by an employee of a fire department who is part of the fire protection personnel, as defined by Section 419.021, Government Code, of the department and is acting in the scope of the person's employment; and

(2) the waste was generated from a property for which the site is designated.

(e) A fire department employee who will supervise a burning under Subsection (d)(1)(D) shall notify the commission of each burning supervised by the employee, and the commission shall provide the employee with information on practical alternatives to burning.

The amendments were read.

Senator Staples moved to concur in the House amendments to **SB 1710**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 757 ADOPTED**

Senator Brimer called from the President's table the Conference Committee Report on **SB 757**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2005.

On motion of Senator Brimer, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

(Senator Brimer in Chair)

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2438 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on **HB 2438**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2005.

On motion of Senator Armbrister, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent: Averitt.

SENATE RESOLUTION 1060

Senator Armbrister offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 79th Legislature, Regular Session, 2005, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **HB 1835** (the apportionment of municipal infrastructure costs in regard to certain property development projects) to consider and take action on the following matter:

Senate Rule 12.03(1) is suspended to permit the committee to change the text of SECTION 2 of the bill to read as follows:

SECTION 2. The change in law made by this Act applies to the approval of a development project that is not finally adjudicated before the effective date of this Act.

Explanation: The change is necessary to ensure that the changes in law made by the bill apply to a matter that has not been finally determined by a court before the effective date of the Act.

SR 1060 was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of the resolution.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1835 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on **HB 1835**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2005.

On motion of Senator Armbrister, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

(Senator Whitmire in Chair)

SENATE RESOLUTION 1071

Senator Ogden offered the following resolution:

BE IT RESOLVED, BY THE Senate of the State of Texas, that Senate Rule 12.03 and 12.04, be suspended in part as provided by Senate Rule 12.08 to enable consideration of, and action on, specific matters which may be contained in the Conference Committee Report on **SB 1**.

SR 1071 was read and was adopted by the following vote: Yeas 31, Nays 0.

(Senator Carona in Chair)

(President in Chair)

(Senator Whitmire in Chair)

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1 ADOPTED**

Senator Ogden called from the President's table the Conference Committee Report on **SB 1**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2005.

On motion of Senator Ogden, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 1.

Nays: Shapleigh.

STATEMENT OF LEGISLATIVE INTENT

Senator Zaffirini submitted the following statement of legislative intent for **SB 1**:

As Chair of the Article II (Health and Human Services) Work Group for the Senate Finance Committee and the Senate Bill 1 Appropriations Conference Committee, I developed the Special Provisions Relating to all Health Care Health and Human Services Agencies Section 49, which is in Senate Bill 1 and on which HB 1771 is based. Our intent was to ensure that the Health and Human Services Commission will seek the necessary federal waiver for the Integrated Care Management model of Medicaid managed care laid out in HB 1771. We expect the ICM model developed in HB 1771 to be piloted in the Dallas service area by September 1, 2006, and the appropriate public hospital and county officials to be consulted about whether the ICM model will be the model of managed care implemented in their respective service areas.

It is also my intent that the Health and Human Services Commission work closely with provider groups and consumer advocate groups to ensure that long term services and supports comparable to community based alternative waiver services will be offered under the ICM model to all who are eligible for that waiver. What's more, the Health and Human Services Commission should require the ICM contractor to subcontract with qualified local community based organizations for some or all care coordination, service coordination, recipient outreach and educational services, and relocation services under the Promoting Independence Initiative. Recipients should

have the option of consumer directed services. Finally, a comprehensive outreach and educational initiative should be conducted at least 90 days prior to implementation of ICM to inform recipients and providers about the implementation.

ZAFFIRINI

REMARKS ORDERED PRINTED

On motion of Senator Hinojosa and by unanimous consent, the remarks between Senators Ogden and Hinojosa regarding **SB 1** were ordered reduced to writing and printed in the *Senate Journal*.

The remarks are printed in the addendum to today's journal.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 182**

Senator Janek submitted the following Conference Committee Report:

Austin, Texas

May 26, 2005

Honorable David Dewhurst

President of the Senate

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 182** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

JANEK
DUNCAN

ELTIFE

WENTWORTH

WILLIAMS

On the part of the Senate

MOWERY

TRUITT

VEASEY

WONG

On the part of the House

The Conference Committee Report on **HB 182** was filed with the Secretary of the Senate on Friday, May 27, 2005.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 969**

Senator Hinojosa submitted the following Conference Committee Report:

Austin, Texas

May 27, 2005

Honorable David Dewhurst

President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 969** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HINOJOSA
DUNCAN
WHITMIRE

KEEL
BONNEN
ESCOBAR
GATTIS
PENA

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 969** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2423**

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 26, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2423** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ARMBRISTER
LUCIO
HARRIS
MADLA

PUENTE
GEREN
T. KING

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2423** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 3485**

Senator Lucio submitted the following Conference Committee Report:

Austin, Texas
May 27, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3485** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

LUCIO
HARRIS
SHAPLEIGH
WENTWORTH

On the part of the Senate

OLIVEIRA
ESCOBAR
SOLIS
F. BROWN

On the part of the House

The Conference Committee Report on **HB 3485** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1604

Senator Staples submitted the following Conference Committee Report:

Austin, Texas
May 27, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 1604** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

STAPLES
BRIMER
ELTIFE
MADLA

On the part of the Senate

B. COOK
GRIGGS
HARDCASTLE
D. JONES

On the part of the House

A BILL TO BE ENTITLED AN ACT

relating to the administration, powers, duties, and operations of the Neches and Trinity Valleys Groundwater Conservation District.

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

SECTION 1. Section 5, Chapter 1387, Acts of the 77th Legislature, Regular Session, 2001, is amended by adding Subsection (g) to read as follows:

(g) The district may not assess a fee of any type on a well if the well's production is used only for domestic, agricultural, or wildlife purposes within the district.

SECTION 2. Section 6, Chapter 1387, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 6. BOARD OF DIRECTORS. (a) The district is governed by a board of directors appointed as provided by Section 7 of this Act.

(b) Each director shall serve at the pleasure of the political subdivision by which the appointment was made.

(c) Except for the initial term, all directors appointed by the county commissioners court in each county in the district serve four-year terms. The director appointed jointly under Subsection (b), Section 7 of this Act, serves a two-year term. The terms of four initial directors will expire at the end of the calendar year two years after the effective date of this Act and the terms of three initial directors will expire at the end of the calendar year four years after the effective date of this Act.

(d) ~~(e)~~ Subject to Subsection (c) ~~(b)~~ of this section, the initial directors appointed by the county commissioners court in each county shall draw lots to determine one initial director from each county who shall serve a two-year term. The other initial directors shall serve terms of four years.

(e) ~~(d)~~ Each director must qualify to serve as a director in the manner provided by Section 36.055, Water Code.

(f) ~~(e)~~ A director serves until the director's successor has qualified.

(g) ~~(f)~~ Directors may serve consecutive terms.

(h) ~~(g)~~ If there is a vacancy on the board of directors, the governing body of the entity that appointed the director who vacated the office shall appoint a director to serve the remainder of the term.

(i) ~~(h)~~ Directors are not entitled to receive compensation for serving as a director but may be reimbursed for actual, reasonable expenses incurred in the discharge of official duties.

(j) ~~(i)~~ A majority vote of a quorum is required for board action. If there is a tie vote, the proposed action fails.

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

The Conference Committee Report on **SB 1604** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1830

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas
May 27, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 1830** 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

LUNA
CROWNOVER

DUNCAN
OGDEN
WHITMIRE

On the part of the Senate

DUKES
HOPSON

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and operation of the quality assurance fee program with regard to intermediate care facilities for persons with mental retardation.

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

SECTION 1. Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.078 through 531.082 to read as follows:

Sec. 531.078. QUALITY ASSURANCE FEES ON CERTAIN WAIVER PROGRAM SERVICES. (a) In this section, "gross receipts" means money received as compensation for services under an intermediate care facilities for the mentally retarded waiver program such as a home and community services waiver or a community living assistance and support services waiver. The term does not include a charitable contribution, revenues received for services or goods other than waivers, or any money received from consumers or their families as reimbursement for services or goods not normally covered by the waivers.

(b) The executive commissioner by rule shall modify the quality assurance fee program under Subchapter H, Chapter 252, Health and Safety Code, by providing for a quality assurance fee program that imposes a quality assurance fee on persons providing services under a home and community services waiver or a community living assistance and support services waiver.

(c) The executive commissioner shall establish the fee at an amount that will produce annual revenues of not more than six percent of the total annual gross receipts in this state.

(d) The executive commissioner shall adopt rules governing:

(1) the reporting required to compute and collect the fee and the manner and times of collecting the fee; and

(2) the administration of the fee, including the imposition of penalties for a violation of the rules.

(e) Fees collected under this section shall be deposited in the waiver program quality assurance fee account.

Sec. 531.079. WAIVER PROGRAM QUALITY ASSURANCE FEE ACCOUNT. (a) The waiver program quality assurance fee account is a dedicated account in the general revenue fund. The account is exempt from the application of Section 403.095. Interest earned on money in the account shall be credited to the account.

(b) The account consists of fees collected under Section 531.078 and interest earned on money in the account.

(c) Subject to legislative appropriation and state and federal law, money in the account may be appropriated only to the Department of Aging and Disability Services to increase reimbursement rates paid under the home and community services waiver program or the community living assistance and support services waiver program or to offset allowable expenses under the state Medicaid program.

Sec. 531.080. REIMBURSEMENT OF WAIVER PROGRAMS. Subject to legislative appropriation and state and federal law, the Department of Aging and Disability Services shall use money from the waiver program quality assurance fee account, together with any federal money available to match money from the account, to increase reimbursement rates paid under the home and community services waiver program or the community living assistance and support services waiver program.

Sec. 531.081. INVALIDITY; FEDERAL FUNDS. If any portion of Sections 531.078-531.080 is held invalid by a final order of a court that is not subject to appeal, or if the commission determines that the imposition of the quality assurance fee and the expenditure of the money collected as provided by those sections will not entitle this state to receive additional federal money under the Medicaid program, the commission shall:

(1) stop collection of the quality assurance fee; and

(2) not later than the 30th day after the date the collection of the quality assurance fee is stopped, return any money collected under Section 531.078, but not spent under Section 531.080, to the persons who paid the fees in proportion to the total amount paid by those persons.

Sec. 531.082. EXPIRATION OF QUALITY ASSURANCE FEE ON WAIVER PROGRAMS. If Subchapter H, Chapter 252, Health and Safety Code, expires, this section and Sections 531.078-531.081 expire on the same date.

SECTION 2. Section 252.209, Health and Safety Code, is repealed.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

The Conference Committee Report on **SB 1830** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 268

Senator Hinojosa submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 268** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HINOJOSA
HARRIS
SELIGER

KEEL
DENNY
HODGE
PENA
REYNA

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 268** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2217**

Senator Staples submitted the following Conference Committee Report:

Austin, Texas
May 27, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2217** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

STAPLES
OGDEN
SHAPLEIGH
WILLIAMS

MCCALL
HAMRIC
EILAND
RITTER
WOOLLEY

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2217** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1634**

Senator Gallegos submitted the following Conference Committee Report:

Austin, Texas
May 27, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1634** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

GALLEGOS

ELLIS

HINOJOSA

WHITMIRE

On the part of the Senate

R. ALLEN

TALTON

KEEL

URESTI

On the part of the House

The Conference Committee Report on **HB 1634** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2525

Senator Lindsay submitted the following Conference Committee Report:

Austin, Texas

May 27, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2525** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

LINDSAY

ELTIFE

JACKSON

WHITMIRE

On the part of the Senate

CALLEGARI

ANDERSON

RODRIGUEZ

W. SMITH

On the part of the House

The Conference Committee Report on **HB 2525** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 3518

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas

May 27, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3518** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ELLIS
MADLA
WENTWORTH
LINDSAY

COLEMAN
R. ALLEN
W. SMITH
TALTON
OLIVO

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 3518** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 873**

Senator Lucio submitted the following Conference Committee Report:

Austin, Texas
May 27, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 873** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

LUCIO
ELLIS
HARRIS
MADLA

DUKES
GIDDINGS
ZEDLER
SOLOMONS
ELKINS

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 873** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1357**

Senator Seliger submitted the following Conference Committee Report:

Austin, Texas
May 27, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1357** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

SELIGER
ELLIS
HINOJOSA
LINDSAY
WILLIAMS

On the part of the Senate

FLORES
CHISUM
MORRISON
SOLIS
HOMER

On the part of the House

The Conference Committee Report on **HB 1357** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2668**

Senator Wentworth submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2668** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WENTWORTH
HARRIS
HINOJOSA

On the part of the Senate

NIXON
PAXTON
STRAMA

On the part of the House

The Conference Committee Report on **HB 2668** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 982**

Senator Van de Putte submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 982** 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
ELLIS
ARMBRISTER
ELTIFE
HARRIS

PUENTE
HUNTER
STRAUS

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to certain practices to improve energy conservation in state buildings.

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

SECTION 1. Section 447.004, Government Code, is amended by amending Subsection (e) and adding Subsection (f) to read as follows:

(e) A state agency ~~[or an institution of higher education]~~ may not begin construction of a new state building or a major renovation project before the design architect or engineer for the construction or renovation has:

(1) certified to the appropriate authority having jurisdiction ~~[agency or institution]~~ that the construction or renovation complies with:

(A) the standards established under this section; and

(B) the alternative energy and energy-efficient architectural and engineering design evaluation requirements under Sections 2166.401, 2166.403, and 2166.408; and

(2) provided ~~[a copy of that certification]~~ to the appropriate authority having jurisdiction and the state energy conservation office copies of:

(A) each certification under Subdivision (1); and

(B) any written evaluation or detailed economic feasibility study prepared in accordance with Section 2166.401, 2166.403, or 2166.408.

(f) An institution of higher education may not begin construction of a new state building or a major renovation project before the design architect or engineer for the construction or renovation has:

(1) certified to the institution of higher education that the construction or renovation complies with the standards established under this section; and

(2) provided to the state energy conservation office a copy of that certification.

SECTION 2. Subsection (a), Section 2166.153, Government Code, is amended to read as follows:

(a) A project analysis consists of:

(1) a complete description of the project and a justification of the project prepared by the using agency;

(2) a detailed estimate of the amount of space needed to meet the needs of the using agency and to allow for realistic growth;

(3) a description of the proposed project prepared by a design professional that:

(A) includes schematic plans and outline specifications describing the type of construction and probable materials to be used; and

(B) is sufficient to establish the general scope and quality of construction;

(4) an estimate of the probable cost of construction;

(5) a description of the proposed site of the project and an estimate of the cost of site preparation;

(6) an overall estimate of the cost of the project, including necessary funding for life-cycle costing, whole building integrated design, commissioning, and postoccupancy building performance verification;

(7) information prepared under Section 2166.451 about historic structures considered as alternatives to new construction;

(8) an evaluation of energy alternatives and energy-efficient architectural and engineering design alternatives as required by Sections [Section] 2166.401, 2166.403, and 2166.408; and

(9) other information required by the commission.

SECTION 3. The section heading to Section 2166.403, Government Code, is amended to read as follows:

Sec. 2166.403. ALTERNATIVE ENERGY AND ENERGY-EFFICIENT ARCHITECTURAL AND ENGINEERING DESIGN IN NEW BUILDING CONSTRUCTION.

SECTION 4. Section 2166.403, Government Code, is amended by amending Subsections (b) and (c) and adding Subsections (b-1), (b-2), (c-1), and (c-2) to read as follows:

(b) Except as provided by Subsection (c-1), during [During] the planning phase of the proposed construction, the commission, or the governing body of the appropriate agency [or institution] that is undertaking a project otherwise exempt from this chapter under Section 2166.003, must present a detailed written evaluation at [shall verify in] an open meeting to verify the economic feasibility of:

(1) using energy-efficient architectural or engineering design alternatives; or

(2) incorporating into the building's design and proposed energy system alternative energy devices for space heating and cooling, water heating, electrical loads, and interior lighting.

(b-1) A detailed written evaluation under Subsection (b) must be made available to the public at least 30 days before the open meeting at which it is presented.

(b-2) In each detailed written evaluation under Subsection (b), the [The] commission or governing body shall determine economic feasibility for each function by comparing the estimated cost of providing energy for all or part of the function using conventional design practices and energy systems or operating under conventional architectural or engineering designs with the estimated cost of providing energy for all or part of the function using alternative energy devices or operating under alternative energy-efficient architectural or engineering designs during the

economic life of the building. The comptroller's state energy conservation office, or its successor, must approve any methodology or electronic software used by the commission or governing body, or an entity contracting with the commission or governing body, to make a comparison or determine feasibility under this subsection.

(c) If the use of alternative energy devices or energy-efficient architectural design alternatives for a particular function is determined to be economically feasible under Subsection (b-2) [(b)], the commission or governing body shall include the use of alternative energy devices or energy-efficient architectural design alternatives for that function in the construction plans.

(c-1) For a project constructed by and for a state institution of higher education, the governing body of the institution shall, during the planning phase of the proposed construction for the project, verify in an open meeting the economic feasibility of incorporating into the building's design and proposed energy system alternative energy devices for space heating and cooling functions, water heating functions, electrical load functions, and interior lighting functions. The governing body of the institution shall determine the economic feasibility of each function listed in this subsection by comparing the estimated cost of providing energy for the function, based on the use of conventional design practices and energy systems, with the estimated cost of providing energy for the function, based on the use of alternative energy devices, during the economic life of the building.

(c-2) If the use of alternative energy devices for a specific function is determined to be economically feasible under Subsection (c-1), the governing body shall include the use of alternative energy devices for that function in the construction plans for the project.

SECTION 5. Subdivision (1), Subsection (d), Section 2166.403, Government Code, is amended to read as follows:

(1) "Alternative energy" means a renewable energy resource. The term includes solar energy, biomass energy, geothermal energy, and wind energy.

SECTION 6. Subchapter I, Chapter 2166, Government Code, is amended by adding Section 2166.408 to read as follows:

Sec. 2166.408. EVALUATION OF ARCHITECTURAL AND ENGINEERING DESIGN ALTERNATIVES. (a) For each project for which a project analysis is prepared under Subchapter D and for which architectural or engineering design choices will affect the energy-efficiency of the building, the commission or the private design professional retained by the commission shall prepare a written evaluation of energy-efficient architectural or engineering design alternatives for the project.

(b) The evaluation must include information about the economic and environmental impact of various energy-efficient architectural or engineering design alternatives, including an evaluation of economic and environmental costs both initially and over the life of the architectural or engineering design.

(c) The evaluation must identify the best architectural and engineering designs for the project considering both economic and environmental costs and benefits.

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, 2005.

The Conference Committee Report on **SB 982** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2928**

Senator Seliger submitted the following Conference Committee Report:

Austin, Texas
May 27, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2928** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

SELIGER
CARONA
ELTIFE

KOLKHORST
B. COOK
CHISUM
MCREYNOLDS

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2928** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2145**

Senator Deuell submitted the following Conference Committee Report:

Austin, Texas
May 27, 2005

Honorable David Dewhurst
President of the Senate

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 2145** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

DEUELL
NELSON
VAN DE PUTTE
ELTIFE

HUPP
TAYLOR
SEAMAN

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2145** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1610**

Senator Brimer submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst

President of the Senate

Honorable Tom Craddick

Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1610** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

BRIMER
HARRIS
JACKSON
MADLA

On the part of the Senate

CHISUM
W. SMITH
OLIVO
FARABEE

On the part of the House

The Conference Committee Report on **HB 1610** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1273**

Senator Jackson submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst

President of the Senate

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 **SB 1273** 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
MADLA

On the part of the Senate

GEREN
R. COOK
MOWERY
ORR
PUENTE

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the establishment of the Texas farm and ranch lands conservation program.

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

SECTION 1. Chapter 183, Natural Resources Code, is amended by designating Sections 183.001 through 183.005 as Subchapter A, Chapter 183, Natural Resources Code, and by adding a heading for that subchapter to read as follows:

SUBCHAPTER A. CONSERVATION EASEMENTS GENERALLY

SECTION 2. Chapter 183, Natural Resources Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. TEXAS FARM AND RANCH LANDS CONSERVATION
PROGRAM

Sec. 183.051. PURPOSE. The purpose of the program established under this subchapter is to enable and facilitate the purchase and donation of agricultural conservation easements.

Sec. 183.052. DEFINITIONS. In this subchapter:

(1) "Agricultural conservation easement" means a conservation easement in qualified land that is designed to accomplish one or more of the following additional purposes:

(A) conserving water quality or quantity;

(B) conserving native wildlife species through protection of their habitat;

(C) conserving rare or sensitive plant species; or

(D) conserving large tracts of qualified open-space land that are threatened with fragmentation or development.

(2) "Commissioner" means the commissioner of the General Land Office.

(3) "Council" means the Texas Farm and Ranch Lands Conservation Council established under Section 183.061.

(4) "Fund" means the Texas farm and ranch lands conservation fund established under Section 183.058.

(5) "Land office" means the General Land Office.

(6) "Program" means the Texas farm and ranch lands conservation program established under this subchapter.

(7) "Purchase of agricultural conservation easement" means the purchase from a willing seller of an agricultural conservation easement.

(8) "Qualified easement holder" means a holder that is:

(A) a state agency or a municipality; or

(B) an organization that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code and that is organized for the purpose of preserving agriculture, open space, or natural resources.

(9) "Qualified land" means qualified open-space land, as that term is defined by Section 23.51, Tax Code.

Sec. 183.053. PROGRAM. The Texas farm and ranch lands conservation program is established as a program of the land office for the purpose of administering the assistance to be provided by the fund for the purchase of agricultural conservation easements.

Sec. 183.054. TERMS OF AGRICULTURAL CONSERVATION EASEMENT. (a) An agricultural conservation easement under this subchapter must be perpetual or for a term of 30 years.

(b) The owner of qualified land and a potential purchaser of an agricultural conservation easement should consider and negotiate easement terms, including the following considerations:

(1) whether the landowner will receive a lump sum or annual payments;
(2) whether the term of the easement shall be perpetual or for a term of 30 years;

(3) whether a term easement is renewable;

(4) whether the landowner retains limited development rights; and

(5) the purchase price of the easement.

(c) An agricultural conservation easement may not be assigned to or enforced by a third party without the express written consent of the landowner.

Sec. 183.055. TERMINATION OF EASEMENT. (a) Any time after an agricultural conservation easement is acquired with a grant awarded under this subchapter, the landowner may request that the council terminate the easement as provided by Subsection (b) on the ground that the landowner is unable to meet the conservation goals as described by Section 183.052(1). The termination request must contain a verifiable statement of impossibility.

(b) On receipt of the request for termination, the council shall notify the qualified easement holder and conduct an inquiry. Not later than the 180th day after the date the council receives the request, the council shall notify the parties of the decision to grant or deny the request for termination. Either party may appeal the decision in district court not later than the 45th day after the date of the notification.

Sec. 183.056. REPURCHASE BY LANDOWNER. (a) In this section:

(1) "Agricultural value" means the price as of the appraisal date a buyer willing, but not obligated, to buy would pay for a farm or ranch unit with land comparable in quality and composition to the subject property, but located in the nearest location where profitable farming or ranching is feasible.

(2) "Fair market value" means the price as of the appraisal date that a buyer willing, but not obligated, to buy would pay for the land at its best and most beneficial use under any obtainable development zoning category.

(b) If a request for termination of an agricultural conservation easement is granted under Section 183.055, the commissioner shall order an appraisal of the fair market value and the agricultural value of the property subject to the easement. The landowner shall bear the cost of the appraisal.

(c) Not later than the 180th day after the date of the appraisal under Subsection (b), the landowner must pay to the qualified easement holder an amount equal to the difference between the fair market value and the agricultural value. The qualified easement holder shall pay to the fund any amounts received under this subsection, not to exceed the amount paid by the fund for purchase of the easement.

(d) Not later than the 30th day after the date of payment by the landowner under Subsection (c), the qualified easement holder shall terminate the easement.

(e) If the request for termination is denied or if the landowner fails to make the payment required by Subsection (c) in the time required by that subsection, the landowner may not submit another request for termination of the easement before the fifth anniversary of the date of the last request.

Sec. 183.057. PROTECTED LAND; NOTICE OF TAKING. (a) A department or agency of this state, a county, a municipality, another political subdivision, or a public utility may not approve any program or project that requires the use or taking through eminent domain of private land encumbered by an agricultural conservation easement purchased under this subchapter unless the governmental entity or public utility acting through its governing body or officers determines that:

(1) there is no feasible and prudent alternative to the use or taking of the land; and

(2) the program or project includes all reasonable planning to minimize harm to the land resulting from the use or taking.

(b) A determination required by Subsection (a) may be made only at a properly noticed public hearing.

(c) The governing body or officers of the governmental entity or public utility may consider clearly enunciated local preferences, and the provisions of this subchapter do not constitute a mandatory prohibition against the use of the area if the determinations required by Subsection (a) are made.

(d) If, after making the determination required by Subsection (a), a department or agency of this state, a county, a municipality, another political subdivision, or a public utility acquires by eminent domain a fee simple interest in land encumbered by an agricultural conservation easement purchased under this subchapter:

(1) the easement on the condemned property terminates; and

(2) the entity exercising the power of eminent domain shall:

(A) pay for an appraisal of the fair market value, as that term is defined by Section 183.056, of the property subject to condemnation;

(B) pay to the qualified easement holder an amount equal to the amount paid by the holder for the portion of the easement affecting the property to be condemned;

(C) pay to the landowner an amount equal to the fair market value of the condemned property less the amount paid to the qualified easement holder under Paragraph (B); and

(D) pay to the landowner and the qualified easement holder any additional damages to their interests in the remaining property, as determined by the special commissioners under Section 21.042, Property Code.

(e) If, after making the determination required by Subsection (a), a department or agency of this state, a county, a municipality, another political subdivision, or a public utility acquires by eminent domain an interest other than a fee simple interest in land encumbered by an agricultural conservation easement purchased under this subchapter:

(1) the entity exercising the power of eminent domain shall pay for an appraisal of the fair market value, as that term is defined by Section 183.056, of the property subject to condemnation; and

(2) the special commissioners shall consider the fair market value as the value of the property for purposes of assessing damages under Section 21.042, Property Code.

(f) The qualified easement holder shall pay to the fund any amounts received under Subsections (d) and (e), not to exceed the amount paid by the fund for the purchase of the easement.

Sec. 183.058. TEXAS FARM AND RANCH LANDS CONSERVATION FUND. (a) The Texas farm and ranch lands conservation fund is an account in the general revenue fund that may be appropriated only to the land office to be used as provided by Subsection (b). The fund may not be used for grants to purchase or acquire any right or interest in property by eminent domain. The fund consists of:

(1) money appropriated by the legislature to the fund;

(2) public or private grants, gifts, donations, or contributions; and

(3) funds from any other source, including proceeds from the sale of bonds, state or federal mitigation funds, or funds from any local, state, or federal program.

(b) The fund may be used only:

(1) to award grants to qualified easement holders for the purchase of agricultural conservation easements;

(2) to pay transaction costs related to the purchase of agricultural conservation easements, which may include reimbursement of appraisal costs; and

(3) to pay associated administrative costs of the land office, not to exceed five percent of the money in the fund.

Sec. 183.059. ADMINISTRATION OF FUND. (a) The council may:

(1) adopt rules necessary to perform program duties under this subchapter;

(2) request, accept, and use gifts, loans, donations, aid, appropriations, guaranties, subsidies, grants, or contributions of any item of value for the furtherance of any purposes of this subchapter;

(3) establish, charge, and collect fees, charges, and penalties in connection with the programs, services, and activities provided for by this subchapter;

(4) make, enter into, and enforce contracts and agreements, and take other actions as may accomplish any of the purposes of this subchapter;

(5) seek ways to coordinate and leverage public and private sources of funding;

(6) adopt best practices and enforcement standards for the evaluation of easements purchased through grants from the fund;

(7) establish a protocol for the purchase of agricultural conservation easements and for the distribution of funds to approved applicants;

(8) administer grants awarded to successful applicants;

(9) ensure that agricultural conservation easements purchased under this subchapter are not inconsistent with the preservation of open space and the conservation of wildlife habitat or water; and

(10) approve the termination of easements and take any other action necessary to further the goals of the program.

(b) To receive a grant from the fund under this subchapter, an applicant who is qualified to be an easement holder under this subchapter must submit an application to the council. The application must:

(1) set out the parties' clear conservation goals consistent with the program;
(2) include a site-specific estimate-of-value appraisal by a licensed appraiser qualified to determine the market value of the easement;

(3) demonstrate that the applicant is able to match 50 percent of the amount of the grant being sought, considering that the council may choose to allow a donation of part of the appraised value of the easement to be considered as in-kind matching funds; and

(4) include a memorandum of understanding signed by the landowner and the applicant indicating intent to sell an agricultural conservation easement and containing the terms of the contract for the sale of the easement.

(c) For the purposes of determining the amount of a grant under this subchapter, the value of an agricultural conservation easement shall be determined by a site-specific estimate-of-value appraisal performed by a licensed, qualified appraiser.

Sec. 183.060. CRITERIA FOR AWARDING GRANTS. The council shall adopt a scoring process to be used in evaluating applications that considers the following:

(1) maintenance of landscape and watershed integrity to conserve water and natural resources;

(2) protection of highly productive agricultural lands;

(3) protection of habitats for native plant and animal species, including habitats for endangered, threatened, rare, or sensitive species;

(4) susceptibility of the subject property to subdivision, fragmentation, or other development;

(5) potential for leveraging state money allocated to the program with additional public or private money;

(6) proximity of the subject property to other protected lands;

(7) the term of the proposed easement, whether perpetual or for a term of 30 years; and

(8) a resource management plan agreed to by both parties and approved by the council.

Sec. 183.061. TEXAS FARM AND RANCH LANDS CONSERVATION COUNCIL. (a) The Texas Farm and Ranch Lands Conservation Council is established to advise and assist the commissioner with administration of the program and to select applicants to receive grants under this subchapter using the criteria adopted by the council under Section 183.060. The council consists of:

(1) six members appointed by the governor as follows:

(A) one member who operates a family farm or ranch in this state;

(B) one member who is the designated representative of an agricultural banking or lending organization and who has significant experience lending for farms and ranches or lands encumbered by conservation easements;

(C) two members who are the designated representatives of a statewide agricultural organization in existence in this state for not less than 10 years;

(D) one member who is a designated representative of a statewide nonprofit organization that represents land trusts operating in this state; and

(E) one member from a state institution of higher education who has significant experience with natural resources issues; and

(2) four ex officio members as follows:

(A) the commissioner;

(B) the commissioner of agriculture or the commissioner's designee;

(C) the presiding officer of the Parks and Wildlife Commission or the presiding officer's designee; and

(D) the state conservationist of the Natural Resources Conservation Service of the United States Department of Agriculture or a designee of that person, who serves as a nonvoting member.

(b) Appointed members of the council serve staggered terms of six years, with two of the members' terms expiring February 1 of each odd-numbered year.

(c) Appointments to and removal from the council shall be made by the governor without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(d) The commissioner or the commissioner's designee shall serve as the presiding officer of the council and shall designate from among the members of the council an assistant presiding officer to serve in that capacity at the will of the commissioner. The council may choose from its members other officers as the council considers necessary.

(e) A member of the council is not entitled to compensation for service on the council but is entitled to reimbursement of the necessary and reasonable travel expenses incurred by the member while conducting the business of the council, as provided for state employees by the General Appropriations Act.

(f) The council shall meet not less than once each year.

(g) A person may not be appointed as a council member if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving money under the program;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving money under the program; or

(3) uses or receives a substantial amount of tangible goods, services, or money under the program other than reimbursement authorized by law for travel expenses as described by Subsection (e).

(h) In this subsection, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. A person may not be an appointed member of the council if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association for an occupation or profession with an interest in land conservation that is related to the occupation or profession; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association for an occupation or profession with an interest in land conservation that is related to that occupation or profession.

(i) A person may not be an appointed member of the council or act as the general counsel to the council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of an occupation or profession with an interest in land conservation that is related to that occupation or profession.

(j) It is a ground for removal from the council if a member:

(1) is ineligible for membership under this section;

(2) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(3) is absent from more than half of the regularly scheduled council meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the council.

(k) The validity of an action of the council is not affected by the fact that it is taken when a ground for removal of a participating council member exists.

(l) If the presiding officer has knowledge that a potential ground for removal exists, the presiding officer shall notify the commissioner and the governor that a potential ground for removal exists.

(m) The presiding officer or the presiding officer's designee, with the assistance of staff of the land office, shall provide to members of the council information regarding a member's responsibilities under applicable laws relating to standards of conduct for state officers.

(n) A person who is appointed to and qualifies for office as a member of the council may not vote, deliberate, or be counted as a member in attendance at a meeting of the council until the person completes a training program that complies with this section. The training program must provide the person with information regarding:

(1) the legislation that created the council;

(2) the program to be administered under this subchapter;

(3) the role and functions of the council;

(4) the rules of the council, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the council;

(6) the results of the most recent formal audit of the council;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code;

and

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

(8) any applicable policies adopted by the council or the Texas Ethics Commission.

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

Sec. 183.062. EFFECT ON TAX APPRAISAL. An agricultural conservation easement under this subchapter does not affect the eligibility of the property subject to the easement for appraisal for ad valorem tax purposes under Subchapter D, Chapter 23, Tax Code.

Sec. 183.063. REPORT TO TEXAS DEPARTMENT OF TRANSPORTATION. Not later than the 10th day after the date of a closing of a purchase of an easement under this subchapter, the land office shall provide the Texas Department of Transportation a legal description of the property subject to the easement and shall include with the description the date the closing occurred.

SECTION 3. As soon as practicable after the effective date of this Act, the governor shall appoint the members of the Texas Farm and Ranch Lands Conservation Council, as required under Section 183.061, Natural Resources Code, as added by this Act. In appointing the initial members of the council under this section, the governor shall appoint:

- (1) two members for terms expiring February 1, 2007;
- (2) two members for terms expiring February 1, 2009; and
- (3) two members for terms expiring February 1, 2011.

SECTION 4. This Act takes effect September 1, 2005.

The Conference Committee Report on **SB 1273** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2604

Senator Van de Putte submitted the following Conference Committee Report:

Austin, Texas
May 27, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2604** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

VAN DE PUTTE
SHAPLEIGH
FRASER
ESTES
SELIGER

GUILLEN
BERMAN
PENA
HUGHES

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2604** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 567**

Senator Deuell submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 567** 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
SELIGER
STAPLES

On the part of the Senate

J. KEFFER
P. KING
PAXTON

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to requiring a taxing unit to include in the public notice of a hearing on the adoption of an ad valorem tax rate certain information relating to the taxing unit's budget and appraisal roll.

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

SECTION 1. Subsection (b), Section 26.06, Tax Code, is amended to read as follows:

(b) The notice of a public hearing may not be smaller than one-quarter page of a standard-size or a tabloid-size newspaper, and the headline on the notice must be in 24-point ~~18-point~~ or larger type. The notice must:

(1) contain a statement in the following form:

"NOTICE OF PUBLIC HEARING ON TAX INCREASE

"The (name of the taxing unit) will hold a public hearing on a proposal to increase total tax revenues from properties on the tax roll in the preceding tax year by (percentage by which proposed tax rate exceeds lower of rollback tax rate or effective tax rate calculated under this chapter) percent. Your individual taxes may increase at a greater or lesser rate, or even decrease, depending on the change in the taxable value of your property in relation to the change in taxable value of all other property and the tax rate that is adopted.

"The public hearing will be held on (date and time) at (meeting place).

"(Names of all members of the governing body, showing how each voted on the proposal to consider the tax increase or, if one or more were absent, indicating the absences.)"; and

(2) contain the following information:

(A) a section entitled "Comparison of Proposed Budget with Last Year's Budget," which must show the difference, expressed as a percent increase or decrease, as applicable, in the amount budgeted in the preceding fiscal year and the amount budgeted for the fiscal year that begins in the current tax year for each of the following:

(i) maintenance and operations;

(ii) debt service; and

(iii) total expenditures;

(B) a section entitled "Total Appraised Value and Total Taxable Value," which must show the total appraised value and the total taxable value of all property and the total appraised value and the total taxable value of new property taxable by the unit in the preceding tax year and the current tax year as calculated under Section 26.04;

(C) the total amount of the outstanding and unpaid bonded indebtedness of the taxing unit;

(D) the unit's adopted tax rate for the preceding tax year and the proposed tax rate, expressed as an amount per \$100;

(E) [~~(B)~~] the difference, expressed as an amount per \$100 and as a percent increase or decrease, as applicable, in the proposed tax rate compared to the adopted tax rate for the preceding tax year;

(F) [~~(C)~~] the average appraised value of a residence homestead in the taxing unit in the preceding tax year and in the current tax year; the unit's homestead exemption, other than an exemption available only to disabled persons or persons 65 years of age or older, applicable to that appraised value in each of those years; and the average taxable value of a residence homestead in the unit in each of those years, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or older;

(G) [~~(D)~~] the amount of tax that would have been imposed by the unit in the preceding tax year on a residence homestead appraised at the average appraised value of a residence homestead in that year, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or older;

(H) [~~(E)~~] the amount of tax that would be imposed by the unit in the current tax year on a residence homestead appraised at the average appraised value of a residence homestead in the current tax year, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or older, if the proposed tax rate is adopted; and

(I) [~~(F)~~] the difference between the amounts of tax calculated under Paragraphs (G) [~~(D)~~] and (H) [~~(E)~~], expressed in dollars and cents and described as the annual increase or decrease, as applicable, in the tax to be imposed by the unit on the average residence homestead in the unit in the current tax year if the proposed tax rate is adopted.

SECTION 2. Subsection (c), Section 44.004, Education Code, is amended to read as follows:

(c) The notice of public meeting to discuss and adopt the budget and the proposed tax rate may not be smaller than one-quarter page of a standard-size or a tabloid-size newspaper, and the headline on the notice must be in 18-point or larger type. Subject to Subsection (d), the notice must:

(1) contain a statement in the following form:

**"NOTICE OF PUBLIC MEETING TO DISCUSS BUDGET AND
PROPOSED TAX RATE**

"The (name of school district) will hold a public meeting at (time, date, year) in (name of room, building, physical location, city, state). The purpose of this meeting is to discuss the school district's budget that will determine the tax rate that will be adopted. Public participation in the discussion is invited." The statement of the purpose of the meeting must be in bold type. In reduced type, the notice must state: "The tax rate that is ultimately adopted at this meeting or at a separate meeting at a later date may not exceed the proposed rate shown below unless the district publishes a revised notice containing the same information and comparisons set out below and holds another public meeting to discuss the revised notice.";

(2) contain a section entitled "Comparison of Proposed Budget with Last Year's Budget," which must show the difference, expressed as a percent increase or decrease, as applicable, in the amounts budgeted for the preceding fiscal year and the amount budgeted for the fiscal year that begins in the current tax year for each of the following:

(A) maintenance and operations;

(B) debt service; and

(C) total expenditures;

(3) contain a section entitled "Total Appraised Value and Total Taxable Value," which must show the total appraised value and the total taxable value of all property and the total appraised value and the total taxable value of new property taxable by the district in the preceding tax year and the current tax year as calculated under Section 26.04, Tax Code;

(4) contain a statement of the total amount of the outstanding and unpaid bonded indebtedness of the school district;

(5) contain a section entitled "Comparison of Proposed Rates with Last Year's Rates," which must:

(A) show in rows the tax rates described by Subparagraphs (i)-(iii), expressed as amounts per \$100 valuation of property, for columns entitled "Maintenance & Operations," "Interest & Sinking Fund," and "Total," which is the sum of "Maintenance & Operations" and "Interest & Sinking Fund":

(i) the school district's "Last Year's Rate";

(ii) the "Rate to Maintain Same Level of Maintenance & Operations Revenue & Pay Debt Service," which:

(a) in the case of "Maintenance & Operations," is the tax rate that, when applied to the current taxable value for the district, as certified by the chief appraiser under Section 26.01, Tax Code, and as adjusted to reflect changes made by the chief appraiser as of the time the notice is prepared, would impose taxes in an amount that, when added to state funds to be distributed to the district under Chapter 42, would provide the same amount of maintenance and operations taxes and state

funds distributed under Chapter 42 per student in average daily attendance for the applicable school year that was available to the district in the preceding school year; and

(b) in the case of "Interest & Sinking Fund," is the tax rate that, when applied to the current taxable value for the district, as certified by the chief appraiser under Section 26.01, Tax Code, and as adjusted to reflect changes made by the chief appraiser as of the time the notice is prepared, and when multiplied by the district's anticipated collection rate, would impose taxes in an amount that, when added to state funds to be distributed to the district under Chapter 46 and any excess taxes collected to service the district's debt during the preceding tax year but not used for that purpose during that year, would provide the amount required to service the district's debt; and

(iii) the "Proposed Rate";

(B) contain fourth and fifth columns aligned with the columns required by Paragraph (A) that show, for each row required by Paragraph (A):

(i) the "Local Revenue per Student," which is computed by multiplying the district's total taxable value of property, as certified by the chief appraiser for the applicable school year under Section 26.01, Tax Code, and as adjusted to reflect changes made by the chief appraiser as of the time the notice is prepared, by the total tax rate, and dividing the product by the number of students in average daily attendance in the district for the applicable school year; and

(ii) the "State Revenue per Student," which is computed by determining the amount of state aid received or to be received by the district under Chapters 42, 43, and 46 and dividing that amount by the number of students in average daily attendance in the district for the applicable school year; and

(C) contain an asterisk after each calculation for "Interest & Sinking Fund" and a footnote to the section that, in reduced type, states "The Interest & Sinking Fund tax revenue is used to pay for bonded indebtedness on construction, equipment, or both. The bonds, and the tax rate necessary to pay those bonds, were approved by the voters of this district.";

(6) [(3)] contain a section entitled "Comparison of Proposed Levy with Last Year's Levy on Average Residence," which must:

(A) show in rows the information described by Subparagraphs (i)-(iv), rounded to the nearest dollar, for columns entitled "Last Year" and "This Year":

(i) "Average Market Value of Residences," determined using the same group of residences for each year;

(ii) "Average Taxable Value of Residences," determined after taking into account the limitation on the appraised value of residences under Section 23.23, Tax Code, and after subtracting all homestead exemptions applicable in each year, other than exemptions available only to disabled persons or persons 65 years of age or older or their surviving spouses, and using the same group of residences for each year;

(iii) "Last Year's Rate Versus Proposed Rate per \$100 Value"; and

(iv) "Taxes Due on Average Residence," determined using the same group of residences for each year; and

(B) contain the following information: "Increase (Decrease) in Taxes" expressed in dollars and cents, which is computed by subtracting the "Taxes Due on Average Residence" for the preceding tax year from the "Taxes Due on Average Residence" for the current tax year;

(7) [~~4~~] contain the following statement in bold print: "Under state law, the dollar amount of school taxes imposed on the residence of a person 65 years of age or older or of the surviving spouse of such a person, if the surviving spouse was 55 years of age or older when the person died, may not be increased above the amount paid in the first year after the person turned 65, regardless of changes in tax rate or property value.";

(8) [~~5~~] contain the following statement in bold print: "Notice of Rollback Rate: The highest tax rate the district can adopt before requiring voter approval at an election is (the school district rollback rate determined under Section 26.08, Tax Code). This election will be automatically held if the district adopts a rate in excess of the rollback rate of (the school district rollback rate)."; and

(9) [~~6~~] contain a section entitled "Fund Balances," which must include the estimated amount of interest and sinking fund balances and the estimated amount of maintenance and operation or general fund balances remaining at the end of the current fiscal year that are not encumbered with or by corresponding debt obligation, less estimated funds necessary for the operation of the district before the receipt of the first payment under Chapter 42 in the succeeding school year.

SECTION 3. (a) The change in law made by this Act applies to the public notice required in connection with the ad valorem tax rate of a taxing unit beginning with the 2006 tax year, except as provided by Subsection (b) of this section.

(b) If the governing body of a taxing unit has adopted an ad valorem tax rate for the taxing unit for the 2006 tax year before the effective date of this Act, the change in law made by this Act applies to the public notice required in connection with the ad valorem tax rate of that taxing unit beginning with the 2007 tax year, and the law in effect when the tax rate was adopted applies to the 2006 tax year with respect to that taxing unit.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

The Conference Committee Report on **SB 567** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2876

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 27, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2876** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ARMBRISTER
MADLA
ESTES
BARRIENTOS
LINDSAY

CALLEGARI
PUENTE
GEREN
HARDCASTLE

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2876** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 872**

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 872** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ARMBRISTER
BRIMER
LUCIO
WHITMIRE

WEST
CRABB
GONZALEZ TOUREILLES
HOWARD

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 872** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1670**

Senator Staples submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 1670** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

STAPLES

ELLIS

LINDSAY

MADLA

WENTWORTH

On the part of the Senate

CALLEGARI

DESHOTEL

ESCOBAR

TAYLOR

On the part of the House

A BILL TO BE ENTITLED

AN ACT

relating to a motor vehicle financial responsibility verification program; providing a penalty.

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

SECTION 1. Chapter 601, Transportation Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. FINANCIAL RESPONSIBILITY VERIFICATION PROGRAM

Sec. 601.451. DEFINITION. In this subchapter, "implementing agencies" means:

- (1) the department;
- (2) the Texas Department of Transportation;
- (3) the Texas Department of Insurance; and
- (4) the Department of Information Resources.

Sec. 601.452. IMPLEMENTATION OF PROGRAM; RULES. (a) The Texas Department of Insurance in consultation with the other implementing agencies shall establish a program for verification of whether owners of motor vehicles have established financial responsibility. The program established must be:

- (1) the program most likely to:
 - (A) reduce the number of uninsured motorists in this state;
 - (B) operate reliably;
 - (C) be cost-effective;
 - (D) sufficiently protect the privacy of the motor vehicle owners;
 - (E) sufficiently safeguard the security and integrity of information

provided by insurance companies;

(F) identify and employ a method of compliance that improves public convenience; and

- (G) provide information that is accurate and current; and

- (2) capable of being audited by an independent auditor.

(b) The implementing agencies shall jointly adopt rules to administer this subchapter.

(c) The implementing agencies shall convene a working group to facilitate the implementation of the program, assist in the development of rules, and coordinate a testing phase and necessary changes identified in the testing phase. The working group must consist of representatives of the implementing agencies and the insurance industry and technical experts with the skills and knowledge, including knowledge of privacy laws, required to create and maintain the program.

Sec. 601.453. AGENT. (a) The Texas Department of Insurance in consultation with the other implementing agencies, under a competitive bidding procedure, shall select an agent to develop, implement, operate, and maintain the program.

(b) The implementing agencies shall jointly enter into a contract with the selected agent.

(c) A contract under this section may not have a term of more than five years.

Sec. 601.454. INFORMATION PROVIDED BY INSURANCE COMPANY; PRIVACY. (a) Each insurance company providing motor vehicle liability insurance policies in this state shall provide necessary information for those policies to allow the agent to carry out this subchapter, subject to the agent's contract with the implementing agencies and rules adopted under this subchapter.

(b) The agent is entitled only to information that is at that time available from the insurance company and that is determined by the implementing agencies to be necessary to carry out this subchapter.

(c) Information obtained under this subchapter is confidential. The agent may use the information only for a purpose authorized under this subchapter and may not use the information for a commercial purpose.

(d) A person commits an offense if the person knowingly uses information obtained under this subchapter for any purpose not authorized under this subchapter. An offense under this subsection is a Class B misdemeanor.

SECTION 2. Subsections (c) and (d), Section 502.1715, Transportation Code, are amended to read as follows:

(c) Fees [~~On or after August 31, 2005, fees~~] collected under this section shall be deposited to the credit of the state highway fund. Subject to appropriation, the money may be used by the Department of Public Safety, the Texas Department of Insurance, the Department of Information Resources, and the department to carry out Subchapter N, Chapter 601.

(d) The Department of Public Safety, [~~and~~] the Texas Department of Insurance, the Department of Information Resources, and the department shall jointly adopt rules and develop forms necessary to administer this section.

SECTION 3. Subsection (b), Section 502.1715, Transportation Code, is repealed.

SECTION 4. The Texas Department of Insurance shall select an agent required by Section 601.453, Transportation Code, as added by this Act, before December 31, 2005. The agencies responsible for implementing Subchapter N, Chapter 601, Transportation Code, as added by this Act, shall adopt rules and establish and publish a user guide clearly specifying requirements and procedures for providing information under the verification program under that subchapter not later than seven months before the full implementation of the program. Those implementing agencies shall require full implementation of the financial responsibility verification program for vehicles covered under a personal automobile insurance policy before December 31, 2006, and implementation of that program for vehicles covered under a commercial insurance policy when the implementing agencies determine that implementation for vehicles covered under a commercial insurance policy is feasible.

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

The Conference Committee Report on **SB 1670** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2481**

Senator Harris submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

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 2481** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HARRIS
ARMBRISTER
JACKSON
ELLIS

On the part of the Senate

BONNEN
HAMRIC
HOMER
KUEMPEL

On the part of the House

The Conference Committee Report on **HB 2481** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 3539**

Senator Fraser submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3539** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

FRASER
ESTES
AVERITT

ARMBRISTER
On the part of the Senate

HUPP
MILLER
CALLEGARI
BONNEN

On the part of the House

The Conference Committee Report on **HB 3539** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2129**

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate
Honorable Tom Craddick
Speaker of the House of Representatives
Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2129** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ARMBRISTER
JACKSON
ESTES
HINOJOSA
MADLA

On the part of the Senate

BONNEN
GEREN
HAMRIC
RITTER
WEST

On the part of the House

The Conference Committee Report on **HB 2129** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 3563**

Senator Staples submitted the following Conference Committee Report:

Austin, Texas
May 27, 2005

Honorable David Dewhurst
President of the Senate
Honorable Tom Craddick
Speaker of the House of Representatives
Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3563** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

STAPLES
AVERITT
ELTIFE

On the part of the Senate

P. KING
BAILEY
LUNA
SWINFORD

On the part of the House

The Conference Committee Report on **HB 3563** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1800**

Senator Harris submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate
Honorable Tom Craddick
Speaker of the House of Representatives
Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1800** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HARRIS
BRIMER
VAN DE PUTTE

DENNY
HUGHES
J. JONES
KEEL
MADDEN

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 1800** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2572**

Senator Janek submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate
Honorable Tom Craddick
Speaker of the House of Representatives
Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2572** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

JANEK
ARMBRISTER
DEUELL
LUCIO

TRUITT
HUPP
ISETT
FARABEE

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2572** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 771**

Senator West submitted the following Conference Committee Report:

Austin, Texas
May 27, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 771** 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
BRIMER
DEUELL
ELLIS
GALLEGOS

HARTNETT
ANCHIA
GEREN
VEASEY

On the part of the Senate

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to tax increment financing.

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

SECTION 1. Subsection (a), Section 311.005, Tax Code, is amended to read as follows:

(a) To be designated as a reinvestment zone, an area must:

(1) substantially arrest or impair the sound growth of the municipality creating the zone, retard the provision of housing accommodations, or constitute an economic or social liability and be a menace to the public health, safety, morals, or welfare in its present condition and use because of the presence of:

(A) a substantial number of substandard, slum, deteriorated, or deteriorating structures;

(B) the predominance of defective or inadequate sidewalk or street layout;

(C) faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

(D) unsanitary or unsafe conditions;

(E) the deterioration of site or other improvements;

(F) tax or special assessment delinquency exceeding the fair value of the land;

(G) defective or unusual conditions of title; ~~or~~

(H) conditions that endanger life or property by fire or other cause; or

(I) structures, other than single-family residential structures, less than 10 percent of the square footage of which has been used for commercial, industrial, or residential purposes during the preceding 12 years, if the municipality has a population of 100,000 or more;

(2) be predominantly open and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impair or arrest the sound growth of the municipality; ~~or~~

(3) be in a federally assisted new community located in the municipality or in an area immediately adjacent to a federally assisted new community; or

(5) be an area described in a petition requesting that the area be designated as a reinvestment zone, if the petition is submitted to the governing body of the municipality by the owners of property constituting at least 50 percent of the appraised value of the property in the area according to the most recent certified appraisal roll for the county in which the area is located.

SECTION 2. Section 311.008, Tax Code, is amended by adding Subsection (e) to read as follows:

(e) The implementation of a project plan to alleviate a condition described by Section 311.005(a)(1), (2), or (3) and to promote development or redevelopment of a reinvestment zone in accordance with this chapter serves a public purpose.

SECTION 3. Chapter 311, Tax Code, is amended by adding Section 311.0087 to read as follows:

Sec. 311.0087. RESTRICTION ON POWERS OF CERTAIN MUNICIPALITIES. (a) This section applies only to a proposed reinvestment zone:

(1) the designation of which is requested in a petition submitted under Section 311.005(a)(5) before July 31, 2004, to the governing body of a home-rule municipality that:

(A) has a population of more than 1.1 million;

(B) is located primarily in a county with a population of 1.5 million or less; and

(C) has created at least 20 reinvestment zones under this chapter; and

(2) that is the subject of a resolution of intent that was adopted before October 31, 2004, by the governing body of the municipality.

(b) If the municipality imposes a fee of more than \$25,000 for processing the petition, the municipality may not require a property owner who submitted the petition, as a condition of designating the reinvestment zone or approving a development agreement, interlocal agreement, or project plan for the proposed reinvestment zone:

(1) to waive any rights of the owner under Chapter 245, Local Government Code, or under any agreed order or settlement agreement to which the municipality is a party;

(2) to dedicate more than 20 percent of the owner's land in the area described in the petition as open-space land; or

(3) to use a nonconventional use pattern for a development to be located within the proposed reinvestment zone.

SECTION 4. Section 311.010, Tax Code, is amended by adding Subsections (g), (h), and (i) to read as follows:

(g) Chapter 252, Local Government Code, does not apply to a dedication, pledge, or other use of revenue in the tax increment fund for a reinvestment zone by the board of directors of the zone in carrying out its powers under Subsection (b).

(h) Subject to the approval of the governing body of the municipality that created the zone, the board of directors of a reinvestment zone, as necessary or convenient to implement the project plan and reinvestment zone financing plan and achieve their purposes, may establish and provide for the administration of one or more programs for the public purposes of developing and diversifying the economy of the zone, eliminating unemployment and underemployment in the zone, and developing or expanding transportation, business, and commercial activity in the zone, including programs to make grants and loans from the tax increment fund of the zone in an aggregate amount not to exceed the amount of the tax increment produced by the municipality and paid into the tax increment fund for the zone for activities that benefit the zone and stimulate business and commercial activity in the zone. For purposes of this subsection, on approval of the municipality, the board of directors of the zone has all the powers of a municipality under Chapter 380, Local Government Code.

(i) The board of directors of a reinvestment zone or a local government corporation administering a reinvestment zone may contract with the municipality that created the zone to allocate from the tax increment fund for the zone an amount equal to the tax increment produced by the municipality and paid into the tax increment fund for the zone to pay the incremental costs of providing municipal services incurred as a result of the creation of the zone or the development or redevelopment of the land in the zone, regardless of whether the costs of those services are identified in the project plan or reinvestment zone financing plan for the zone.

SECTION 5. Section 311.013, Tax Code, is amended by amending Subsection (b) and adding Subsections (l) and (m) to read as follows:

(b) Each taxing unit shall pay into the tax increment fund for the zone an amount equal to the tax increment produced by the unit, less the sum of:

(1) property taxes produced from the tax increments that are, by contract executed before the designation of the area as a reinvestment zone, required to be paid by the unit to another political subdivision; and

(2) for a taxing unit other than the municipality that created the zone, a portion, not to exceed 15 percent, of the tax increment produced by the unit as provided by the reinvestment zone financing plan or a larger portion as provided by Subsection (f).

(l) The governing body of a municipality that designates an area as a reinvestment zone may determine, in the designating ordinance adopted under Section 311.003 or in the ordinance adopted under Section 311.011 approving the reinvestment zone financing plan for the zone, the portion of the tax increment produced by the municipality that the municipality is required to pay into the tax increment fund for the zone. If a municipality does not determine the portion of the tax increment produced by the municipality that the municipality is required to pay into the tax increment fund for a reinvestment zone, the municipality is required to pay into the fund for the zone the entire tax increment produced by the municipality, except as provided by Subsection (b)(1).

(m) The governing body of a municipality that is located in a county with a population of more than 1.4 million but less than 2.1 million or in a county with a population of 3.3 million or more by ordinance may reduce the portion of the tax

increment produced by the municipality that the municipality is required to pay into the tax increment fund for the zone. The municipality may not reduce under this subsection the portion of the tax increment produced by the municipality that the municipality is required to pay into the tax increment fund for the zone unless the municipality provides each county that has entered into an agreement with the municipality to pay all or a portion of the county's tax increment into the fund an opportunity to enter into an agreement with the municipality to reduce the portion of the tax increment produced by the county that the county is required to pay into the tax increment fund for the zone by the same proportion that the portion of the municipality's tax increment that the municipality is required to pay into the fund is reduced. The portion of the tax increment produced by a municipality that the municipality is required to pay into the tax increment fund for a reinvestment zone, as reduced by the ordinance adopted under this subsection, together with all other revenues required to be paid into the fund, must be sufficient to complete and pay for the estimated costs of projects listed in the reinvestment zone financing plan and pay any tax increment bonds or notes issued for the zone, and any other obligations of the zone.

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

The Conference Committee Report on **SB 771** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE JOINT RESOLUTION 80

Senator Ogden submitted the following Conference Committee Report:

Austin, Texas

May 28, 2005

Honorable David Dewhurst

President of the Senate

Honorable Tom Craddick

Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HJR 80** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

OGDEN
CARONA
ESTES
MADLA
WILLIAMS

On the part of the Senate

KRUSEE
GEREN
KEEL
MARTINEZ FISCHER
HARTNETT

On the part of the House

The Conference Committee Report on **HJR 80** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2510**

Senator Jackson submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2510** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

JACKSON
ARMBRISTER
ESTES

BONNEN
CROWNOVER
RITTER
HOWARD

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2510** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 11**

Senator Staples submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 11** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

STAPLES
ELLIS
LINDSAY
SHAPIRO
SHAPLEIGH

DELISI
BERMAN
CORTE

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to security in public schools.

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

SECTION 1. Subchapter D, Chapter 37, Education Code, is amended by adding Section 37.108 to read as follows:

Sec. 37.108. MULTHAZARD EMERGENCY OPERATIONS PLAN; SECURITY AUDIT. (a) Each school district shall adopt and implement a multihazard emergency operations plan for use in district schools. The plan must address mitigation, preparedness, response, and recovery as defined by the commissioner in conjunction with the governor's office of homeland security. The plan must provide for:

(1) district employee training in responding to an emergency;

(2) mandatory school drills to prepare district students and employees for responding to an emergency;

(3) measures to ensure coordination with local emergency management agencies, law enforcement, and fire departments in the event of an emergency; and

(4) the implementation of a security audit as required by Subsection (b).

(b) At least once every three years, a school district shall conduct a security audit of the district's facilities. To the extent possible, a district shall follow security audit procedures developed by the Texas School Safety Center or a comparable public or private entity.

(c) A school district shall report the results of the security audit conducted under Subsection (b) to the district's board of trustees.

SECTION 2. Subsection (a), Section 37.203, Education Code, is amended to read as follows:

(a) The center is advised ~~governed~~ by a board of directors composed of:

(1) the attorney general, or the attorney general's designee;

(2) the commissioner, or the commissioner's designee;

(3) the executive director of the Texas Juvenile Probation Commission, or the executive director's designee;

(4) the executive director of the Texas Youth Commission, or the executive director's designee;

(5) the commissioner of the Texas Department of Mental Health and Mental Retardation, or the commissioner's designee; and

(6) the following members appointed by the governor with the advice and consent of the senate:

(A) a juvenile court judge;

(B) a member of a school district's board of trustees;

(C) an administrator of a public primary school;

(D) an administrator of a public secondary school;

(E) a member of the state parent-teacher association;

(F) a teacher from a public primary or secondary school;

(G) a public school superintendent who is a member of the Texas Association of School Administrators;

(H) a school district police officer or a peace officer whose primary duty consists of working in a public school; and

(I) two members of the public.

SECTION 3. Section 37.205, Education Code, is amended to read as follows:

Sec. 37.205. SAFETY TRAINING PROGRAMS. The center shall conduct for school districts a safety training program that includes:

(1) development of a positive school environment and proactive safety measures designed to address local concerns;

(2) school safety courses for law enforcement officials, with a focus on school district police officers and school resource officers;

(3) discussion of school safety issues with parents and community members; and

(4) assistance in developing a multihazard emergency operations plan for adoption under Section 37.108 ~~[specialized training for the staff of alternative education programs and juvenile justice alternative education programs]~~.

SECTION 4. Subchapter G, Chapter 37, Education Code, is amended by adding Section 37.2051 to read as follows:

Sec. 37.2051. SECURITY CRITERIA FOR INSTRUCTIONAL FACILITIES. The center shall develop security criteria that school districts may consider in the design of instructional facilities.

SECTION 5. Section 37.208, Education Code, is amended to read as follows:

Sec. 37.208. ON-SITE ASSISTANCE. On request of a school district, the center may ~~[shall]~~ provide on-site technical assistance to the district for:

(1) school safety and security audits; and

(2) school safety and security information and presentations.

SECTION 6. Subsection (b), Section 37.215, Education Code, is amended to read as follows:

(b) The center ~~[board]~~ shall biannually prepare a budget request ~~[for the center]~~ for submission to the legislature.

SECTION 7. Subchapter A, Chapter 46, Education Code, is amended by adding Section 46.0081 to read as follows:

Sec. 46.0081. SECURITY CRITERIA IN DESIGN OF INSTRUCTIONAL FACILITIES. A school district that constructs a new instructional facility or conducts a major renovation of an existing instructional facility using funds allotted to the district under this subchapter shall consider, in the design of the instructional facility, security criteria developed by the Texas School Safety Center under Section 37.2051.

SECTION 8. Sections 37.206 and 37.213, Education Code, are repealed.

SECTION 9. (a) Not later than December 1, 2005, the Texas School Safety Center shall:

(1) develop a school safety program that includes assistance to school districts in developing a multihazard emergency operations plan as required by Section 37.205, Education Code, as amended by this Act; and

(2) develop security criteria for the construction and renovation of school district instructional facilities as required by Section 37.2051, Education Code, as added by this Act.

(b) Not later than March 1, 2006, each school district shall adopt a multihazard emergency operations plan as required by Section 37.108, Education Code, as added by this Act.

SECTION 10. This Act takes effect September 1, 2005.

The Conference Committee Report on **SB 11** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 330**

Senator Deuell submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 330** 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
LINDSAY
AVERITT
VAN DE PUTTE
WEST

On the part of the Senate

MCREYNOLDS
DAWSON
DELISI
MARTINEZ

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the creation of a stroke committee and the development of a statewide stroke emergency transport plan and stroke facility criteria.

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

SECTION 1. Section 773.001, Health and Safety Code, is amended to read as follows:

Sec. 773.001. SHORT TITLE. This chapter may be cited as the Emergency Health Care ~~[Medical Services]~~ Act.

SECTION 2. Section 773.003, Health and Safety Code, is amended by amending Subdivision (7) and adding Subdivision (15-a) to read as follows:

(7) "Department" means the ~~[Texas]~~ Department of State Health Services.

(15-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3. Chapter 773, Health and Safety Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. EMERGENCY STROKE SERVICES

Sec. 773.201. LEGISLATIVE INTENT. The legislature finds that a strong system for stroke survival is needed in the state's communities in order to treat stroke victims in a timely manner and to improve the overall treatment of stroke victims. Therefore, the legislature intends to construct an emergency treatment system in this state so that stroke victims may be quickly identified and transported to and treated in appropriate stroke treatment facilities.

Sec. 773.202. DEFINITIONS. In this subchapter:

(1) "Advisory council" means the advisory council established under Section 773.012.

(2) "Stroke committee" means the committee appointed under Section 773.203.

(3) "Stroke facility" means a health care facility that:

(A) is capable of primary or comprehensive treatment of stroke victims;

(B) is part of an emergency medical services and trauma care system as defined by Section 773.003;

(C) has a health care professional available 24 hours a day, seven days a week who is knowledgeable about stroke care and capable of carrying out acute stroke therapy; and

(D) records patient treatment and outcomes.

Sec. 773.203. STROKE COMMITTEE. (a) The advisory council shall appoint a stroke committee to assist the advisory council in the development of a statewide stroke emergency transport plan and stroke facility criteria.

(b) The stroke committee must include the following members:

(1) a licensed physician appointed from a list of physicians eligible for accreditation in vascular neurology from the Accreditation Council for Graduate Medical Education, recommended by a statewide organization of neurologists;

(2) a licensed interventional neuroradiologist appointed from a list of neuroradiologists recommended by a statewide organization of radiologists;

(3) a neurosurgeon with stroke expertise;

(4) a member of the Texas Council on Cardiovascular Disease and Stroke who has expertise in stroke care;

(5) a licensed physician appointed from a list of physicians recommended by a statewide organization of emergency physicians;

(6) a neuroscience registered nurse with stroke expertise; and

(7) a volunteer member of a nonprofit organization specializing in stroke treatment, prevention, and education.

(c) Chapter 2110, Government Code, does not apply to the stroke committee.

Sec. 773.204. DUTIES OF STROKE COMMITTEE; DEVELOPMENT OF STROKE EMERGENCY TRANSPORT PLAN AND STROKE FACILITY CRITERIA. (a) The advisory council, with the assistance of the stroke committee and in collaboration with the Texas Council on Cardiovascular Disease and Stroke, shall develop a statewide stroke emergency transport plan and stroke facility criteria.

(b) The stroke emergency transport plan must include:

(1) training requirements on stroke recognition and treatment, including emergency screening procedures;

(2) a list of appropriate early treatments to stabilize patients;
(3) protocols for rapid transport to a stroke facility when rapid transport is appropriate and it is safe to bypass another health care facility; and

(4) plans for coordination with statewide agencies or committees on programs for stroke prevention and community education regarding stroke and stroke emergency transport.

(c) In developing the stroke emergency transport plan and stroke facility criteria, the stroke committee shall consult the criteria for stroke facilities established by national medical organizations such as the Joint Commission on Accreditation of Healthcare Organizations.

Sec. 773.205. RULES. The executive commissioner may adopt rules regarding a statewide stroke emergency transport plan and stroke facility criteria based on recommendations from the advisory council.

SECTION 4. (a) Not later than January 1, 2006, the advisory council established under Section 773.012, Health and Safety Code, shall establish a stroke committee as required by Section 773.203, Health and Safety Code, as added by this Act.

(b) Not later than January 1, 2007, the advisory council established under Section 773.012, Health and Safety Code, may develop a statewide stroke emergency transport plan and stroke facility criteria as required by Section 773.204, Health and Safety Code, as added by this Act.

(c) Not later than January 1, 2007, the advisory council shall submit a report of the statewide stroke emergency transport plan to the governor, lieutenant governor, speaker of the house of representatives, and executive commissioner of the Health and Human Services Commission.

(d) The advisory council shall include in any report under Subsection (c) of this section information regarding the stroke facility criteria developed by the council.

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

The Conference Committee Report on **SB 330** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 664

Senator Duncan submitted the following Conference Committee Report:

Austin, Texas
May 27, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 664** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

DUNCAN
BRIMER

ISETT
FROST

SELIGER

HAMILTON
HOPSON
SWINFORD

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 664** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 34**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 34** 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
SHAPIRO
WEST
VAN DE PUTTE
SELIGERMORRISON
ROSE
GOOLSBY
HARPER-BROWN

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the governing board of a state university or state university system and to the tuition rebate program for certain undergraduates at certain state institutions of higher education.

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

SECTION 1. Subdivision (1), Section 51.351, Education Code, is amended to read as follows:

(1) "General academic teaching institution," "governing board," "institution of higher education," "medical and dental unit," "public junior college," and "university system" have the meanings assigned by Section 61.003 ~~[of this code]~~.

SECTION 2. Subchapter G, Chapter 51, Education Code, is amended by adding Sections 51.355 and 51.356 to read as follows:

Sec. 51.355. NONVOTING STUDENT REGENT; UNIVERSITY SYSTEM BOARD OF REGENTS. (a) In this section, "student government" means the representative student organization directly elected by the student body of a general academic teaching institution or medical and dental unit.

(b) The chancellor of each university system shall develop a uniform application form to be used by each general academic teaching institution and medical and dental unit in the university system to solicit applicants for the position of student regent.

(c) Except as provided by Subsection (f), not later than September 1 of each year, the student government of each general academic teaching institution and medical and dental unit in a university system shall solicit applicants for the position of student regent. Not later than November 1, from among the applications received by the student government, the student government shall select five applicants as the student government's recommendations for the position of student regent and send the applications of those applicants, with the name of each applicant and the name of the institution or unit in which the applicant is enrolled removed, to the chancellor of the university system. From among those applicants, the chancellor shall select two or more applicants as the university system's recommendations for the position of student regent and shall send the applications of those applicants to the governor not later than December 1. The governor may request to review all applications for the position of student regent received by the student governments and may request to review information required to be removed from an application by a student government under this subsection. On February 1, or as soon thereafter as practicable, the governor shall appoint one of the applicants to serve as the student regent for the system for a one-year term expiring on the next February 1. The governor is not required to appoint an applicant recommended by the chancellor.

(d) A student regent must be enrolled as an undergraduate or graduate student in a general academic teaching institution or medical and dental unit in the university system at the time of appointment and throughout the student regent's term. For purposes of this subsection, a person is considered to be enrolled in an institution or unit for a summer term if the person was enrolled in the institution or unit for the preceding semester and:

(1) is registered or preregistered at the institution or unit for the following fall semester;

(2) if the person has not completed the person's degree program, is eligible to continue the degree program at the institution or unit in the following fall semester;
or

(3) if the person completed a degree program in the preceding semester, is admitted to another degree program at the institution or unit for the following fall semester.

(e) A student regent is not a member of the board of regents of the system for which the student regent is appointed. A student regent has the same powers and duties as the members of the board of regents of the system, including the right to attend and participate in meetings of the board of regents, except that the student regent:

(1) may not vote on any matter before the board or make or second any motion before the board; and

(2) is not counted in determining whether a quorum exists for a meeting of the board or in determining the outcome of any vote of the board.

(f) The student government of the general academic teaching institution or medical and dental unit at which a current student regent was enrolled at the time of the student regent's appointment may not solicit applicants for the position of student regent for the next regular term of the position.

(g) A vacancy in the position of student regent for a university system shall be filled for the unexpired term by appointment by the governor in consultation with the chancellor of the system.

Sec. 51.356. NONVOTING STUDENT REGENT; INSTITUTION BOARD OF REGENTS. (a) This section applies only to a general academic teaching institution that is not a part of a university system.

(b) In this section, "student government" means the representative student organization directly elected by the student body of a general academic teaching institution.

(c) The president of a general academic teaching institution shall develop a uniform application form to be used to solicit applicants for the position of student regent.

(d) Not later than September 1 of each year, the student government of the general academic teaching institution shall solicit applicants for the position of student regent. Not later than November 1, from among the applications received by the student government, the student government shall select five applicants as the student government's recommendations for the position of student regent and send the applications of those applicants, with the name of each applicant removed, to the president of the institution. From among those applicants, the president shall select two or more applicants as the institution's recommendations for the position of student regent and shall send the applications of those applicants to the governor not later than December 1. The governor may request to review all applications for the position of student regent received by the student government and may request to review information required to be removed from an application by the student government under this subsection. On February 1, or as soon thereafter as practicable, the governor shall appoint one of the applicants to serve as the student regent for the institution for a one-year term expiring on the next February 1. The governor is not required to appoint an applicant recommended by the president.

(e) A student regent must be enrolled as an undergraduate or graduate student in the general academic teaching institution at the time of appointment and throughout the student regent's term. For purposes of this subsection, a person is considered to be enrolled in an institution for a summer term if the person was enrolled in the institution for the preceding semester and:

(1) is registered or preregistered at the institution for the following fall semester;

(2) if the person has not completed the person's degree program, is eligible to continue the degree program at the institution in the following fall semester; or

(3) if the person completed a degree program in the preceding semester, is admitted to another degree program at the institution for the following fall semester.

(f) A student regent is not a member of the board of regents of the institution for which the student regent is appointed. A student regent has the same powers and duties as the members of the board of regents of the institution, including the right to attend and participate in meetings of the board of regents, except that the student regent:

(1) may not vote on any matter before the board or make or second any motion before the board; and

(2) is not counted in determining whether a quorum exists for a meeting of the board or in determining the outcome of any vote of the board.

(g) A vacancy in the position of student regent for an institution shall be filled for the unexpired term by appointment by the governor in consultation with the president of the institution.

SECTION 3. Subsections (a), (c), and (i), Section 54.0065, Education Code, are amended to read as follows:

(a) A qualified student is eligible for a rebate of a portion of the undergraduate tuition the student has paid if the student:

(1) is awarded a baccalaureate degree from a general academic teaching institution within the period prescribed by Section 56.462(1)(A) or (B), as applicable, to qualify for forgiveness of a Texas B-On-time loan; and

(2) has attempted no more than three hours in excess of the minimum number of semester credit hours required to complete the degree, including:

(A) transfer credits; and

(B) course credit earned exclusively by examination, except that, for purposes of this subsection, only the number of semester credit hours earned exclusively by examination in excess of nine semester credit hours is treated as hours attempted.

(c) A student who has transferred from another institution of higher education shall provide the institution awarding the degree an official transcript from each institution attended by the student in order that the period during which the student has been enrolled in a general academic teaching institution and the total number of hours attempted by the student can be verified.

(i) The coordinating board, in consultation with the institutions of higher education, shall adopt rules for the administration of this section, including a rule to allow an otherwise eligible student to receive a rebate under this section if the student is not awarded a baccalaureate degree within the period required by Subsection (a)(1) solely as a result of a hardship or other good cause. The performance of active duty military service by a student shall be recognized as "good cause" for purposes of this section.

SECTION 4. The initial term of a student regent appointed for a state university system under Section 51.355, Education Code, as added by this Act, or for a state university under Section 51.356, Education Code, as added by this Act, expires February 1, 2007. The appropriate student governments, the chancellor of each state university system, the president of each state university that is not a part of a university system, and the governor shall take the actions required by Sections 51.355

and 51.356, Education Code, as added by this Act, as soon as practicable after this Act takes effect to select a student regent for each state university or state university system for that initial term.

SECTION 5. (a) The changes in law made by this Act to Subsections (a), (c), and (i), Section 54.0065, Education Code, apply only to a student who enters a general academic teaching institution for the first time on or after the effective date of this Act.

(b) The Texas Higher Education Coordinating Board shall adopt the rule required by Subsection (i), Section 54.0065, Education Code, as amended by this Act, relating to students who do not graduate within the required time as a result of hardship or other good cause, as soon as practicable after this Act takes effect. For that purpose, the coordinating board may adopt the initial rule in the manner provided by law for emergency rules.

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

The Conference Committee Report on **SB 34** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 698

Senator Averitt submitted the following Conference Committee Report:

Austin, Texas
May 27, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 698** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

AVERITT
FRASER
ELTIFE

MCCALL
KEEL
GIDDINGS
EILAND

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 698** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 585

Senator Wentworth submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 585** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WENTWORTH
BRIMER
MADLA

On the part of the Senate

CORTE
R. COOK
MOWERY

On the part of the House

The Conference Committee Report on **HB 585** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 872**

Senator Nelson again submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 872** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

NELSON
DEUELL
CARONA
HINOJOSA

On the part of the Senate

DELISI
DAWSON
MCREYNOLDS

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to a study regarding the impact of niche hospitals on other general hospitals, to certain reports and disclosure requirements regarding niche hospitals, and to the establishment of an advisory panel to conduct a study on the reporting of health care associated infection rates and process measures.

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

SECTION 1. Section 105.002, Occupations Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) A health care provider commits unprofessional conduct if the health care provider, in connection with the provider's professional activities:

(1) knowingly presents or causes to be presented a false or fraudulent claim for the payment of a loss under an insurance policy; [✖]

(2) knowingly prepares, makes, or subscribes to any writing, with intent to present or use the writing, or to allow it to be presented or used, in support of a false or fraudulent claim under an insurance policy; or

(3) knowingly directs or requires a patient to obtain health care goods or services from a niche hospital in which the health care provider or an immediate family member of the provider has a financial interest, unless the provider:

(A) discloses to the patient, in writing, that the provider or the provider's family member has a financial interest in the niche hospital; and

(B) informs the patient that the patient has the option of using an alternative health care facility.

(c) Subsection (a)(3) does not apply to a financial interest in publicly available shares of a registered investment company, such as a mutual fund, that owns publicly traded equity securities or debt obligations issued by a niche hospital or an entity that owns the niche hospital.

(d) In this section:

(1) "Diagnosis-related group" means the classification system mandated by Medicare regulations for reimbursement purposes that groups patients according to principal diagnosis, presence of a surgical procedure, age, presence or absence of significant complications, and other relevant criteria.

(2) "Niche hospital" means a hospital that:

(A) classifies at least two-thirds of the hospital's Medicare patients or, if data is available, all patients:

(i) in not more than two major diagnosis-related groups; or

(ii) in surgical diagnosis-related groups;

(B) specializes in one or more of the following areas:

(i) cardiac;

(ii) orthopedics;

(iii) surgery; or

(iv) women's health; and

(C) is not:

(i) a public hospital;

(ii) a hospital for which the majority of inpatient claims are for major diagnosis-related groups relating to rehabilitation, psychiatry, alcohol and drug treatment, or children or newborns; or

(iii) a hospital with fewer than 10 claims per bed per year.

SECTION 2. Subchapter B, Chapter 162, Occupations Code, is amended by adding Section 162.052 to read as follows:

Sec. 162.052. NOTICE OF CERTAIN OWNERSHIP INTERESTS. (a) In this section, "niche hospital" has the meaning assigned by Section 105.002.

(b) A physician shall notify the Department of State Health Services of any ownership interest held by the physician in a niche hospital.

(c) Subsection (b) does not apply to an ownership interest in publicly available shares of a registered investment company, such as a mutual fund, that owns publicly traded equity securities or debt obligations issued by a niche hospital or an entity that owns the niche hospital.

(d) The board, in consultation with the Department of State Health Services, shall adopt rules governing the form and content of the notice required by Subsection (b).

SECTION 3. Subtitle D, Title 2, Health and Safety Code, is amended by adding Chapter 96 to read as follows:

CHAPTER 96. HEALTH CARE ASSOCIATED INFECTION RATE
AND PROCESS MEASURE REPORTING
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 96.001. DEFINITIONS. (a) In this chapter:

(1) "Advisory panel" means the Advisory Panel on Health Care Associated Infections.

(2) "Commissioner" means the commissioner of state health services.

(3) "Department" means the Department of State Health Services.

(4) "Health care associated infection" means a localized or symptomatic condition resulting from an adverse reaction to an infectious agent or its toxins to which a patient is exposed in the course of health care delivery.

(5) "Health care facility" means a hospital licensed under Chapter 241 or an ambulatory surgical center licensed under Chapter 243.

(6) "Infection rate" means the number of health care associated infections at a health care facility divided by a numerical measure over time of the population at risk for contracting the infection.

(7) "Process measure" means a measure of a health care facility's compliance with recommended infection control practices.

(b) The advisory panel may modify or define the term "infection rate" as necessary to accomplish the purposes of this chapter.

Sec. 96.002. APPLICABILITY OF OTHER LAW. Chapter 2110, Government Code, does not apply to the advisory panel created under Subchapter B.

Sec. 96.003. EXPIRATION. This chapter expires January 1, 2007.

[Sections 96.004-96.050 reserved for expansion]

SUBCHAPTER B. ADVISORY PANEL ON
HEALTH CARE ASSOCIATED INFECTIONS

Sec. 96.051. ESTABLISHMENT. The commissioner shall establish the Advisory Panel on Health Care Associated Infections within the regulatory licensing unit of the health care quality section of the department.

Sec. 96.052. MEMBERSHIP. The advisory panel is composed of 14 members as follows:

(1) two infection control practitioner members who:

(A) are certified by the Certification Board of Infection Control and Epidemiology; and

(B) are practicing in hospitals in this state, at least one of which must be a rural hospital;

(2) two infection control practitioner members who:

(A) are certified by the Certification Board of Infection Control and Epidemiology; and

(B) are nurses licensed to engage in professional nursing under Chapter 301, Occupations Code;

(3) three board-certified or board-eligible physician members who:

(A) are licensed to practice medicine in this state under Chapter 155, Occupations Code, at least two of whom have active medical staff privileges at a hospital in this state;

(B) are active members of the Society for Healthcare Epidemiology of America; and

(C) have demonstrated expertise in infection control in health care facilities;

(4) one member who is a chief executive officer of a hospital licensed under Chapter 241;

(5) one member who is a chief executive officer of an ambulatory surgical center licensed under Chapter 243;

(6) three members who:

(A) are department employees representing the department in epidemiology and the licensing of hospitals or ambulatory surgical centers; and

(B) serve as nonvoting members of the advisory panel; and

(7) two members who represent the public as consumers.

Sec. 96.053. MEMBER ELIGIBILITY. A person may not be a member of the advisory panel if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to health care.

Sec. 96.054. OFFICERS. The members of the advisory panel shall elect a presiding officer and an assistant presiding officer from among the members.

Sec. 96.055. COMPENSATION; EXPENSES. (a) Except as provided by Subsection (b), a member of the advisory panel is not entitled to compensation for service on the advisory panel and is not entitled to reimbursement for travel expenses.

(b) A member who is a representative of a state agency shall be reimbursed for travel expenses incurred while conducting the business of the advisory panel from the funds of the agency the person represents in accordance with the General Appropriations Act.

Sec. 96.056. VACANCY. A vacancy on the advisory panel shall be filled by the commissioner.

Sec. 96.057. ABOLISHED. The Advisory Panel on Health Care Associated Infections is abolished January 1, 2007.

[Sections 96.058-96.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES OF ADVISORY PANEL

Sec. 96.101. GENERAL POWERS AND DUTIES. (a) The advisory panel, using nationally accepted measures, shall study and recommend definitions and methodologies for collecting and reporting evidence-based data on:

(1) infection rates;

(2) process measures; or

(3) both infection rates and process measures.

(b) In developing the recommendations described in Subsection (a), the advisory panel shall consider:

(1) adjusting the reported infection rates to account for the differences in patient populations and for factors outside the control of the health care facility;

(2) standardizing data collection methodology and reporting;

(3) reviewing data collection and reporting systems of other entities related to infection rates, such as the National Nosocomial Infections Surveillance System of the federal Centers for Disease Control and Prevention;

(4) reviewing data collection and reporting systems of other entities related to process measures, such as the Joint Commission on Accreditation of Healthcare Organizations or the Centers for Medicare and Medicaid Services;

(5) maximizing the efficient use of the resources required for health care facilities to conduct required surveillance and reporting;

(6) recognizing the potential unintended consequences of public reporting that is poorly designed or executed and that may diminish the overall quality of this state's health care or mislead or fail to protect health care consumers who use the data; and

(7) providing additional benefits to health care consumers.

Sec. 96.102. REPORT TO LEGISLATURE. (a) Not later than November 1, 2006, the commissioner shall file a report with the presiding officer of each house of the legislature on the advisory panel's recommendations for legislation regarding the collection and reporting of infection rates, process measures, or both.

(b) The report shall include a recommendation that the legislation set September 1, 2007, as the date for hospitals and ambulatory surgical centers to comply with the legislation.

SECTION 4. Section 108.011, Health and Safety Code, is amended by adding Subsections (c-1) and (c-2) to read as follows:

(c-1) The council shall use public use data to prepare and issue reports that provide information for review and analysis by the Health and Human Services Commission relating to services that are provided in a niche hospital, as defined by Section 105.002, Occupations Code, and that are provided by a physician with an ownership interest in the niche hospital.

(c-2) Subsection (c-1) does not apply to an ownership interest in publicly available shares of a registered investment company, such as a mutual fund, that owns publicly traded equity securities or debt obligations issued by a niche hospital or an entity that owns the niche hospital.

SECTION 5. (a) In this section, "niche hospital" has the meaning assigned by Section 105.002, Occupations Code.

(b) The Department of State Health Services shall conduct a study regarding the impact of niche hospitals on the financial viability of other general hospitals located in this state.

(c) In conducting the study, the Department of State Health Services shall evaluate:

(1) the number of niche hospitals currently operating in this state;

(2) the number of niche hospitals in this state that are currently under construction or in the planning phase of construction;

(3) the location of each niche hospital and its proximity to other general hospitals;

(4) the financial impact of niche hospitals on other general hospitals;

(5) the referral patterns of physicians with an ownership interest in a niche hospital as compared to the referral patterns of physicians with privileges at a niche hospital who do not have an ownership interest in the niche hospital; and

(6) the range of services provided by niche hospitals in this state, with particular emphasis on the provision of emergency and charity care services.

(d) Not later than December 1, 2006, the Department of State Health Services shall submit a report to the legislature regarding the results of the study conducted under this section.

(e) This section expires September 1, 2007.

SECTION 6. Section 105.002, Occupations Code, as amended by this Act, applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs 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 7. As soon as practicable after the effective date of this Act, the commissioner of the Department of State Health Services shall appoint members to the Advisory Panel on Health Care Associated Infections as required by Chapter 96, Health and Safety Code, as added by this Act.

SECTION 8. This Act takes effect September 1, 2005.

The Conference Committee Report on **SB 872** was again filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 468

Senator Jackson submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 468** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

JACKSON
ESTES
MADLA

HEGAR
DRIVER
FROST
HILL
VEASEY

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 468** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 955**

Senator Averitt submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 955** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

AVERITT
ESTES
ELTIFE

On the part of the Senate

SOLOMONS
ELKINS
ORR

On the part of the House

The Conference Committee Report on **HB 955** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 39**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 39** 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
ELLIS
JANEK
LUCIO

On the part of the Senate

GOOLSBY
MCREYNOLDS
MORRISON
HODGE

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to continuing education in forensic evidence collection for certain physicians and nurses.

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

SECTION 1. Subchapter B, Chapter 156, Occupations Code, is amended by adding Section 156.057 to read as follows:

Sec. 156.057. CONTINUING EDUCATION IN FORENSIC EVIDENCE COLLECTION. (a) A physician licensed under this subtitle who submits an application for renewal of a license to practice medicine and whose practice includes treating patients in an emergency room setting may complete two hours of continuing medical education relating to forensic evidence.

(b) The board shall adopt rules to establish the content of continuing medical education relating to forensic evidence collection. The board may adopt other rules to implement this section.

SECTION 2. Subchapter G, Chapter 301, Occupations Code, is amended by adding Section 301.306 to read as follows:

Sec. 301.306. FORENSIC EVIDENCE COLLECTION COMPONENT IN CONTINUING EDUCATION. (a) As part of continuing education requirements under Section 301.303, a license holder who is employed to work in an emergency room setting and who is required under board rules to comply with this section shall complete at least two hours of continuing education relating to forensic evidence collection not later than:

(1) September 1, 2008; or

(2) the second anniversary of the initial issuance of a license under this chapter to the license holder.

(b) The continuing education required under Subsection (a) must be part of a program approved under Section 301.303(c).

(c) The board shall adopt rules to identify the license holders who are required to complete continuing education under Subsection (a) and to establish the content of that continuing education. The board may adopt other rules to implement this section, including rules under Section 301.303(c) for the approval of education programs and providers.

SECTION 3. Not later than June 1, 2006, the Texas State Board of Medical Examiners shall adopt the rules required by Section 156.057, Occupations Code, as added by this Act.

SECTION 4. Not later than January 1, 2006, the Board of Nurse Examiners shall adopt the rules required by Section 301.306, Occupations Code, as added by this Act.

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

The Conference Committee Report on **SB 39** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 880**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate
Honorable Tom Craddick
Speaker of the House of Representatives
Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 880** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ZAFFIRINI
DEUELL
BARRIENTOS
JANEK
NELSON

DELISI
J. DAVIS
MCREYNOLDS

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 880** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 3526**

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate
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 3526** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ELLIS
LINDSAY
MADLA
WHITMIRE

HOCHBERG
A. ALLEN
MADDEN

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 3526** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 444**

Senator Staples submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 444** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

STAPLES
DEUEL
ELTIFE

On the part of the Senate

HOPSON
HUGHES
VO

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to registration fee credits for the owners of certain dry cleaning facilities that do not participate in the dry cleaning facility release fund.

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

SECTION 1. Subsection (b), Section 374.104, Health and Safety Code, is amended to read as follows:

(b) An option not to participate must be filed on or before February 28, 2006 ~~[January 1, 2004]~~. An owner may not file an option not to participate unless the owner was:

(1) the owner of the dry cleaning facility or drop station on January 1, 2004;
and

(2) eligible to file the option on or before January 1, 2004, and inadvertently failed to file before that date.

SECTION 2. An owner of a dry cleaning facility who files an option not to participate in the dry cleaning facility release fund on or before February 28, 2006, and whose facility is designated as nonparticipating by the Texas Commission on Environmental Quality under Section 374.104, Health and Safety Code, as amended by this Act, is entitled to a credit against future registration fees under Section 374.102, Health and Safety Code, to the extent that a registration fee paid in 2004 or 2005 exceeded the amount due for a nonparticipating dry cleaning facility.

SECTION 3. Not later than February 28, 2006, the Texas Commission on Environmental Quality shall adopt rules governing applications to register a dry cleaning facility as nonparticipating in the dry cleaning facility release fund under Section 374.104, Health and Safety Code, as amended by this Act.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

The Conference Committee Report on **SB 444** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1690**

Senator West submitted the following Conference Committee Report:

Austin, Texas
May 27, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1690** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WEST
CARONA
DUNCAN
ELLIS
HARRIS

On the part of the Senate

KEEL
HILL
HODGE
NIXON
ROSE

On the part of the House

The Conference Committee Report on **HB 1690** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1863**

Senator Ogden submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 1863** 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
SHAPIRO

PITTS
CHISUM

DUNCAN
STAPLES

On the part of the Senate

GATTIS

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to certain fiscal matters affecting governmental entities; providing a penalty.

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

ARTICLE 1. REGISTRATION FEE FOR CERTAIN LOBBYISTS

SECTION 1.01. Subsection (c), Section 305.005, Government Code, is amended to read as follows:

(c) The registration fee and registration renewal fee are:

(1) \$100 for a registrant employed by an organization exempt from federal income tax under Section 501(c)(3) or 501(c)(4), Internal Revenue Code of 1986; or

(2) \$500 [~~\$300~~] for any other registrant.

SECTION 1.02. This article takes effect December 1, 2005.

ARTICLE 2. CERTAIN AUDITS OF STATE AGENCY EXPENDITURES

SECTION 2.01. Subtitle C, Title 10, Government Code, is amended by adding Chapter 2115 to read as follows:

CHAPTER 2115. RECOVERY OF CERTAIN STATE AGENCY OVERPAYMENTS

Sec. 2115.001. DEFINITIONS. In this chapter:

(1) "Overpayment" includes a duplicate payment made to a vendor for a single invoice and a payment made to a vendor:

(A) when an available discount from the vendor was not applied;

(B) for a late payment penalty that was improperly applied by the vendor;

(C) for shipping costs that were computed incorrectly or incorrectly included in an invoice;

(D) for state sales tax; or

(E) for a good or service the vendor did not provide.

(2) "State agency" means a department, commission, board, office, or other agency, including a university system or an institution of higher education other than a public junior college, that:

(A) is in the executive branch of state government;

(B) is created by statute; and

(C) does not have statutory geographical boundaries limited to a part of the state.

Sec. 2115.002. CONTRACT CONSULTANTS FOR RECOVERY AUDITS FOR CERTAIN OVERPAYMENTS. (a) The comptroller shall contract with one or more consultants to conduct recovery audits of payments made by state agencies to vendors. The audits must be designed to detect and recover overpayments to the vendors and to recommend improved state agency accounting operations.

(b) A contract under this section:

(1) may provide for reasonable compensation for services provided under the contract, including compensation determined by the application of a specified percentage of the total amount recovered because of the consultant's audit activities or recommendations as a fee for services;

(2) may permit or require the consultant to pursue a judicial action in a court inside or outside this state to recover an overpaid amount; and

(3) to allow time for the performance of existing state payment auditing procedures, may not allow a recovery audit of a payment during the 180-day period after the date the payment was made.

(c) The comptroller or a state agency whose payments are being audited may provide a person acting under a contract authorized by this section with any confidential information in the custody of the comptroller or state agency that is necessary for the performance of the audit or the recovery of an overpayment, to the extent the comptroller and state agency are not prohibited from sharing the information under an agreement with another state or the federal government. A person acting under a contract authorized by this section, and each employee or agent of the person, is subject to all prohibitions against the disclosure of confidential information obtained from the state in connection with the contract that apply to the comptroller or applicable state agency or an employee of the comptroller or applicable state agency. A person acting under a contract authorized by this section or an employee or agent of the person who discloses confidential information in violation of a prohibition made applicable to the person under this subsection is subject to the same sanctions and penalties that would apply to the comptroller or applicable state agency or an employee of the comptroller or applicable state agency for that disclosure.

Sec. 2115.003. STATE AGENCIES SUBJECT TO MANDATORY RECOVERY AUDITS. (a) The comptroller shall require that recovery audits be performed on the payments to vendors made by each state agency that has total expenditures during a state fiscal biennium in an amount that exceeds \$100 million. Each state agency described by this subsection shall provide the recovery audit consultant with all information necessary for the audit.

(b) The comptroller may exempt from the mandatory recovery audit process a state agency that has a low proportion of its expenditures made to vendors, according to criteria the comptroller adopts by rule after consideration of the likely costs and benefits of performing recovery audits for agencies that make relatively few or small payments to vendors.

Sec. 2115.004. PAYMENT TO CONTRACTORS. (a) A state agency shall pay, from recovered money appropriated for the purpose, the recovery audit consultant responsible for obtaining for the agency a reimbursement from a vendor.

(b) A state agency shall expend or return to the federal government any federal money that is recovered through a recovery audit conducted under this chapter. The state agency shall expend or return the federal money in accordance with the rules of the federal program through which the agency received the federal money.

Sec. 2115.005. FORWARDING REPORTS. (a) The comptroller shall provide copies, including electronic form copies, of any reports received from a consultant contracting under Section 2115.002 to:

(1) the governor;

(2) the state auditor's office; and

(3) the Legislative Budget Board.

(b) The comptroller shall provide the copies required by Subsection (a) not later than the seventh day after the date the comptroller receives the consultant's report.

(c) Not later than January 1 of each odd-numbered year, the comptroller shall issue a report to the legislature summarizing the contents of all reports received under this chapter during the state fiscal biennium ending August 31 of the previous year.

SECTION 2.02. The comptroller of public accounts shall adopt rules under Chapter 2115, Government Code, as added by this article, in a timely manner so that the comptroller may begin contracting with a consultant under that chapter not later than January 1, 2006.

ARTICLE 3. ELIGIBILITY FOR MEDICAL ASSISTANCE AND CHILDREN'S HEALTH INSURANCE PROGRAMS

SECTION 3.01. Section 62.102, Health and Safety Code, is amended to read as follows:

Sec. 62.102. CONTINUOUS COVERAGE. ~~[(a)]~~ The commission shall provide that an individual who is determined to be eligible for coverage under the child health plan remains eligible for those benefits until the earlier of:

- (1) the end of the six-month ~~[a]~~ period~~[-, not to exceed 12 months,]~~ following the date of the eligibility determination; or
- (2) the individual's 19th birthday.

~~[(b) The period of continuous eligibility may be established at an interval of 6 months beginning immediately upon passage of this Act and ending September 1, 2005, at which time an interval of 12 months of continuous eligibility will be re-established.]~~

SECTION 3.02. Section 32.0261, Human Resources Code, is amended to read as follows:

Sec. 32.0261. CONTINUOUS ELIGIBILITY. The department shall adopt rules in accordance with 42 U.S.C. Section 1396a(e)(12), as amended, to provide for a period of continuous eligibility for a child under 19 years of age who is determined to be eligible for medical assistance under this chapter. The rules shall provide that the child remains eligible for medical assistance, without additional review by the department and regardless of changes in the child's resources or income, until the earlier of:

- (1) the end of the six-month period following ~~[first anniversary of]~~ the date on which the child's eligibility was determined; or
- (2) the child's 19th birthday.

SECTION 3.03. If before implementing any provision of this article a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

ARTICLE 4. WAIVER OF AND SUPPLEMENTAL HEALTH COVERAGE FOR STATE EMPLOYEES

SECTION 4.01. Subsection (a), Section 1551.104, Insurance Code, is amended to read as follows:

(a) Subject to Sections 1551.101 and 1551.102, each full-time employee is covered automatically by the basic coverage plan for employees and each annuitant is covered by the basic coverage plan for annuitants unless:

- (1) participation is specifically waived as provided by Section 1551.1045;
- (2) the employee or annuitant is expelled from the program under Section 1551.351; or
- (3) eligibility is otherwise limited by this chapter.

SECTION 4.02. Subchapter C, Chapter 1551, Insurance Code, is amended by adding Section 1551.1045 to read as follows:

Sec. 1551.1045. WAIVER. (a) Subject to Subsections (b) and (c), an employee or annuitant may waive in writing any coverage provided under this chapter.

(b) To waive coverage under the basic coverage plan for employees, a full-time employee must demonstrate, in the manner required by the board of trustees, that the employee is:

(1) covered by another health benefit plan that provides substantially equivalent coverage, as determined by the board of trustees, to the coverage provided to employees by the basic coverage plan; or

(2) eligible for benefits under the TRICARE Military Health System.

(c) To waive coverage under the basic coverage plan for annuitants for the purpose of eligibility for an incentive payment under Section 1551.222, an annuitant must demonstrate, in the manner required by the board of trustees, that the annuitant is:

(1) covered by another health benefit plan that provides substantially equivalent coverage, as determined by the board of trustees, to the coverage provided to annuitants by the basic coverage plan; or

(2) eligible for benefits under the TRICARE Military Health System.

SECTION 4.03. Subchapter E, Chapter 1551, Insurance Code, is amended by adding Sections 1551.221 and 1551.222 to read as follows:

Sec. 1551.221. OPTIONAL SUPPLEMENTAL HEALTH COVERAGE FOR INDIVIDUALS ELIGIBLE UNDER TRICARE MILITARY HEALTH SYSTEM.

(a) The board of trustees shall offer, as an optional coverage under the group benefits program, a supplemental health coverage program.

(b) Under the supplemental health coverage program, an employee or annuitant who is eligible to participate in the group benefits program and who is also eligible for benefits under the TRICARE Military Health System may elect to receive primary coverage under the TRICARE Military Health System. An employee or annuitant participating in the supplemental health coverage program must waive basic coverage through the group benefits program, but receives supplemental health coverage under this section.

(c) The cost of supplemental health coverage provided under this section may be paid in the same manner as the cost of other optional coverage is paid under Subchapter G.

(d) The board of trustees shall contract to purchase the supplemental health coverage in accordance with Sections 1551.213-1551.216.

(e) The board of trustees may adopt rules to implement this section.

Sec. 1551.222. INCENTIVE PAYMENTS. (a) The board of trustees may allow an incentive payment under this section to an employee or annuitant who elects to waive coverage under the basic coverage plan for employees or annuitants as provided by Section 1551.1045(b) or (c).

(b) The incentive payment authorized by this section is in the amount authorized by the General Appropriations Act and may be used by the employee or annuitant, in the manner prescribed by the board of trustees, only to pay for other group coverage plans provided under the group benefits program, including the supplemental health coverage offered under Section 1551.221.

(c) The board of trustees, at the time of initial enrollment in the group benefits program and during subsequent open-enrollment periods, shall inform employees and annuitants that they may make an election described by Subsection (a), if eligible, and receive any authorized incentive payment.

SECTION 4.04. Subchapter G, Chapter 1551, Insurance Code, is amended by adding Section 1551.324 to read as follows:

Sec. 1551.324. REDUCTION IN CONTRIBUTION FOR CERTAIN ACTIVE EMPLOYEES AND ANNUITANTS; INCENTIVE PAYMENTS. (a) Notwithstanding any other provision of this subchapter, the state contribution for an employee's coverage or an annuitant's coverage under this chapter may be reduced, as provided in the General Appropriations Act, to reflect the reduced cost of coverage for an employee or annuitant who elects to waive basic coverage as provided by Section 1551.1045(b) or (c).

(b) Instead of the full state contribution for an employee or annuitant who makes an election described by Subsection (a), the state may contribute, as specified by the General Appropriations Act, an amount for the incentive payment authorized by Section 1551.222.

ARTICLE 5. EXTENDING STATE REIMBURSEMENT PROGRAM: PETROLEUM STORAGE TANKS

SECTION 5.01. Subsection (f), Section 26.351, Water Code, is amended to read as follows:

(f) The person performing corrective action under this section, if the release was reported to the commission on or before December 22, 1998, shall meet the following deadlines:

(1) a complete site assessment and risk assessment (including, but not limited to, risk-based criteria for establishing target concentrations), as determined by the executive director, must be received by the agency no later than September 1, 2002;

(2) a complete corrective action plan, as determined by the executive director and including, but not limited to, completion of pilot studies and recommendation of a cost-effective and technically appropriate remediation methodology, must be received by the agency no later than September 1, 2003. The person may, in lieu of this requirement, submit by this same deadline a demonstration that a corrective action plan is not required for the site in question under commission rules. Such demonstration must be to the executive director's satisfaction;

(3) for those sites found under Subdivision (2) to require a corrective action plan, that plan must be initiated and proceeding according to the requirements and deadlines in the approved plan no later than March 1, 2004;

(4) for sites which require either a corrective action plan or groundwater monitoring, a comprehensive and accurate annual status report concerning those activities must be submitted to the agency;

(5) for sites which require either a corrective action plan or groundwater monitoring, all deadlines set by the executive director concerning the corrective action plan or approved groundwater monitoring plan shall be met; and

(6) for sites that require either a corrective action plan or groundwater monitoring, have met all other deadlines under this subsection, and have submitted annual progress reports that demonstrate progress toward meeting closure requirements, a site closure request must be submitted to ~~requests for all sites where the executive director [agreed in writing that no corrective action plan was required must be received by the agency]~~ no later than September 1, 2007 ~~2005~~. The request must be complete, as judged by the executive director.

SECTION 5.02. Subsection (b), Section 26.355, Water Code, is amended to read as follows:

(b) An owner or operator of an underground or aboveground storage tank from which a regulated substance is released is liable to the state unless:

(1) the release was caused by:

(A) ~~(1)~~ an act of God;

(B) ~~(2)~~ an act of war;

(C) ~~(3)~~ the negligence of the State of Texas or the United States;

or

(D) ~~(4)~~ an act or omission of a third party; or

(2) the site at which the release occurred has been admitted into the petroleum storage tank state-lead program under Section 26.3573(r-1).

SECTION 5.03. Subsection (b), Section 26.35731, Water Code, is amended to read as follows:

(b) The commission has discretion whether to postpone considering, processing, or paying ~~may not consider, process, or pay~~ a claim for reimbursement from the petroleum storage tank remediation account for corrective action work begun without prior commission approval after September 1, 1993, and filed with the commission prior to January 1, 2005 ~~without prior commission approval until all claims for reimbursement for corrective action work preapproved by the commission have been considered, processed, and paid~~.

SECTION 5.04. Section 26.3573, Water Code, is amended by amending Subsections (d), (r), and (s) and adding Subsection (r-1) to read as follows:

(d) The commission may use the money in the petroleum storage tank remediation account to pay:

(1) necessary expenses associated with the administration of the petroleum storage tank remediation account and the groundwater protection cleanup program[; ~~not to exceed an amount equal to: 11.8 percent of the gross receipts of that account for FY02/03; 16.40 percent of the gross receipts of that account for FY04/05; and 21.1 percent of the gross receipts of that account for FY06/07;~~];

(2) expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release from a petroleum storage tank, whether those expenses are incurred by the commission or pursuant to a contract between a contractor and an eligible owner or operator as authorized by this subchapter; and

(3) subject to the conditions of Subsection (e) ~~[of this section]~~, expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release of hydraulic fluid or spent oil from hydraulic lift systems or tanks located at a vehicle service and fueling facility and used as part of the operations of that facility.

(r) Except as provided by Subsection (r-1), the ~~[The]~~ petroleum storage tank remediation account may not be used to reimburse any person for corrective action performed after September 1, 2005.

(r-1) In this subsection, "state-lead program" means the petroleum storage tank state-lead program administered by the commission. The executive director shall grant an extension for corrective action reimbursement to a person who is an eligible owner or operator under Section 26.3571. The petroleum storage tank remediation account may be used to reimburse an eligible owner or operator for corrective action performed under an extension before August 31, 2007. Not later than July 1, 2007, an eligible owner or operator who is granted an extension under this subsection may apply to the commission in writing using a form provided by the commission to have the site subject to corrective action placed in the state-lead program. The eligible owner or operator must agree in the application to allow site access to state personnel and state contractors as a condition of placement in the state-lead program under this subsection. On receiving the application for placement in the state-lead program under this subsection, the executive director by order shall place the site in the state-lead program until the corrective action is completed to the satisfaction of the commission. An eligible owner or operator of a site that is placed in the state-lead program under this subsection is not liable to the commission for any costs related to the corrective action.

(s) The petroleum storage tank remediation account may not be used to reimburse any person for corrective action contained in a reimbursement claim filed with the commission after March 1, 2008 ~~[2006]~~.

SECTION 5.05. Subsection (b), Section 26.3574, Water Code, is amended to read as follows:

(b) A fee is imposed on the delivery of a petroleum product on withdrawal from bulk of that product as provided by this subsection. Each operator of a bulk facility on withdrawal from bulk of a petroleum product shall collect from the person who orders the withdrawal a fee in an amount determined as follows:

(1) \$12.50 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for the state fiscal year beginning September 1, 2001, and the state fiscal year beginning September 1, 2002 [FY 02 and FY 03]; and \$10.00 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for the state fiscal year beginning September 1, 2003, through the state fiscal year ending August

31, 2007 [FY 04 and FY 05; \$5.00 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for FY 06; and \$2.00 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for FY 07];

(2) \$25.00 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for the state fiscal year beginning September 1, 2001, and the state fiscal year beginning September 1, 2002 [FY 02 and FY 03]; and \$20.00 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for the state fiscal year beginning September 1, 2003, through the state fiscal year ending August 31, 2007 [FY 04 and FY 05; \$10.00 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for FY 06; and \$4.00 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for FY 07];

(3) \$37.50 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for the state fiscal year beginning September 1, 2001, and the state fiscal year beginning September 1, 2002 [FY 02 and FY 03]; and \$30.00 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for the state fiscal year beginning September 1, 2003, through the state fiscal year ending August 31, 2007 [FY 04 and FY 05; \$15.00 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for FY 06; and \$6.00 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for FY 07];

(4) \$50.00 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for the state fiscal year beginning September 1, 2001, and the state fiscal year beginning September 1, 2002 [FY 02 and FY 03]; and \$40.00 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for the state fiscal year beginning September 1, 2003, through the state fiscal year ending August 31, 2007 [FY 04 and FY 05; \$20.00 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for FY 06; and \$8.00 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for FY 07]; and

(5) a \$25.00 fee for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for the state fiscal year beginning September 1, 2001, and the state fiscal year beginning September 1, 2002 [FY 02 and FY 03]; and \$20.00 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for the state fiscal year beginning September 1, 2003, through the state fiscal year ending August 31, 2007 [FY 04 and FY 05; \$10.00 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for FY 06; and \$4.00 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for FY 07].

SECTION 5.06. Section 26.361, Water Code, is amended to read as follows:

Sec. 26.361. EXPIRATION OF REIMBURSEMENT PROGRAM. Notwithstanding any other provision of this subchapter, the reimbursement program established under this subchapter expires September 1, 2008 [~~2006~~]. On or after September 1, 2008 [~~2006~~], the commission may not use money from the petroleum storage tank remediation account to reimburse an eligible owner or operator for any expenses of corrective action or to pay the claim of a person who has contracted with an eligible owner or operator to perform corrective action.

SECTION 5.07. This article takes effect September 1, 2005.

ARTICLE 6. DRUG PURCHASING FOR STATE AGENCIES

SECTION 6.01. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.080 to read as follows:

Sec. 531.080. JOINT PURCHASING OF PRESCRIPTION DRUGS AND OTHER MEDICATIONS. (a) Subject to Subsection (b), the commission and each health and human services agency authorized by the executive commissioner may enter into an agreement with one or more other states for the joint bulk purchasing of prescription drugs and other medications to be used in the Medicaid program, the state child health plan, or another program under the authority of the commission.

(b) An agreement under this section may not be entered into until:

(1) the commission determines that entering into the agreement would be feasible and cost-effective; and

(2) if appropriated money would be spent under the proposed agreement, the governor and the Legislative Budget Board grant prior approval to expend appropriated money under the proposed agreement.

(c) If an agreement is entered into, the commission shall adopt procedures applicable to an agreement and joint purchase required by this section. The procedures must ensure that this state receives:

(1) all prescription drugs and other medications purchased with money provided by this state; and

(2) an equitable share of any price benefits resulting from the joint bulk purchase.

(d) In determining the feasibility and cost-effectiveness of entering into an agreement under this section, the commission shall identify:

(1) the most cost-effective existing joint bulk purchasing agreement; and

(2) any potential groups of states with which this state could enter into a new cost-effective joint bulk purchasing agreement.

SECTION 6.02. Not later than January 15, 2006, the Health and Human Services Commission shall determine the feasibility and cost-effectiveness of entering into an agreement under Section 531.080, Government Code, as added by this article. If the commission determines that such action is feasible and cost-effective, the commission shall take action to enter into an agreement that takes effect March 1, 2006.

SECTION 6.03. If before implementing any provision of this article a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

ARTICLE 7. CONTINUATION OF QUALITY ASSURANCE FEES

SECTION 7.01. Section 252.209, Health and Safety Code, is repealed.

ARTICLE 8. TEXAS MOBILITY FUND

SECTION 8.01. Subchapter M, Chapter 201, Transportation Code, is amended by adding Section 201.9471 to read as follows:

Sec. 201.9471. TEMPORARY DISPOSITION OF MONEY ALLOCATED TO FUND. (a) Notwithstanding Sections 521.058, 521.313, 521.3466, 521.427, 522.029, 524.051, and 724.046, to the extent that those sections allocate money to the Texas mobility fund, in state fiscal year 2006 the comptroller shall deposit that money to the credit of the general revenue fund instead of to the credit of the Texas mobility fund.

(b) Notwithstanding Sections 521.313, 521.3466, 521.427, 522.029, 524.051, and 724.046, to the extent that those sections allocate money to the Texas mobility fund, in state fiscal year 2007 the comptroller shall deposit that money to the credit of the general revenue fund instead of to the credit of the Texas mobility fund.

(c) This section expires January 1, 2008.

SECTION 8.02. This article takes effect September 1, 2005.

ARTICLE 9. TELECOMMUNICATIONS INFRASTRUCTURE FUND

SECTION 9.01. Section 57.048, Utilities Code, is amended by adding Subsections (f) through (i) to read as follows:

(f) Notwithstanding any other provision of this title, a certificated telecommunications utility may recover from the utility's customers an assessment imposed on the utility under this subchapter after the total amount deposited to the credit of the fund, excluding interest and loan repayments, is equal to \$1.5 billion, as determined by the comptroller. A certificated telecommunications utility may recover only the amount of the assessment imposed after the total amount deposited to the credit of the fund, excluding interest and loan repayments, is equal to \$1.5 billion, as determined by the comptroller. The utility may recover the assessment through a monthly billing process.

(g) The comptroller shall publish in the Texas Register the date on which the total amount deposited to the credit of the fund, excluding interest and loan repayments, is equal to \$1.5 billion.

(h) Not later than February 15 of each year, a certificated telecommunications utility that wants to recover the assessment under Subsection (f) shall file with the commission an affidavit or affirmation stating the amount that the utility paid to the comptroller under this section during the previous calendar year and the amount the utility recovered from its customers in cumulative payments during that year.

(i) The commission shall maintain the confidentiality of information the commission receives under this section that is claimed to be confidential for competitive purposes. The confidential information is exempt from disclosure under Chapter 552, Government Code.

SECTION 9.02. Section 57.0485, Utilities Code, is amended to read as follows:

Sec. 57.0485. ALLOCATION OF REVENUE [ACCOUNTS]. ~~[(a)]~~ The comptroller shall deposit ~~[50 percent of]~~ the money collected by the comptroller under Section 57.048 to the credit of the general revenue fund ~~[public schools account in the~~

~~fund. The comptroller shall deposit the remainder of the money collected by the comptroller under Section 57.048 to the credit of the qualifying entities account in the fund.~~

~~[(b) Interest earned on money in an account shall be deposited to the credit of that account].~~

SECTION 9.03. Section 57.051, Utilities Code, is amended to read as follows:

Sec. 57.051. SUNSET PROVISION. The Telecommunications Infrastructure Fund ~~[Board]~~ is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, ~~[the board is abolished and]~~ this subchapter expires September 1, 2011 ~~[2005]~~.

SECTION 9.04. Section 57.043 and Subsections (c) and (d), Section 57.048, Utilities Code, are repealed.

SECTION 9.05. If, on the day before the effective date of this article, the assessment prescribed by Section 57.048, Utilities Code, is imposed at a rate of less than 1.25 percent, the comptroller of public accounts shall, on the effective date of this article, reset the rate of the assessment to 1.25 percent.

SECTION 9.06. This article takes effect July 1, 2005, if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this article takes effect September 1, 2005.

ARTICLE 10. COLLECTION OF CERTAIN COSTS, FEES, AND FINES IN CRIMINAL CASES

SECTION 10.01. Chapter 103, Code of Criminal Procedure, is amended by adding Article 103.0033 to read as follows:

Art. 103.0033. COLLECTION IMPROVEMENT PROGRAM. (a) In this article:

(1) "Office" means the Office of Court Administration of the Texas Judicial System.

(2) "Program" means the program to improve the collection of court costs, fees, and fines imposed in criminal cases, as developed and implemented under this article.

(b) This article applies only to:

(1) a county with a population of 50,000 or greater; and

(2) a municipality with a population of 100,000 or greater.

(c) Unless granted a waiver under Subsection (h), each county and municipality shall develop and implement a program that complies with the prioritized implementation schedule under Subsection (h). A county program must include district, county, and justice courts.

(d) The program must consist of:

(1) a component that conforms with a model developed by the office and designed to improve in-house collections through application of best practices; and

(2) a component designed to improve collection of balances more than 60 days past due, which may be implemented by entering into a contract with a private attorney or public or private vendor in accordance with Article 103.0031.

(e) Not later than June 1 of each year, the office shall identify those counties and municipalities that:

(1) have not implemented a program; and

(2) are able to implement a program before April 1 of the following year.

(f) The comptroller, in cooperation with the office, shall develop a methodology for determining the collection rate of counties and municipalities described by Subsection (e) before implementation of a program. The comptroller shall determine the rate for each county and municipality not later than the first anniversary of the county's or municipality's adoption of a program.

(g) The office shall:

(1) make available on the office's Internet website requirements for a program; and

(2) assist counties and municipalities in implementing a program by providing training and consultation, except that the office may not provide employees for implementation of a program.

(h) The office, in consultation with the comptroller, may:

(1) use case dispositions, population, revenue data, or other appropriate measures to develop a prioritized implementation schedule for programs; and

(2) determine whether it is not cost-effective to implement a program in a county or municipality and grant a waiver to the county or municipality.

(i) Each county and municipality shall at least annually submit to the office and the comptroller a written report that includes updated information regarding the program, as determined by the office in cooperation with the comptroller. The report must be in a form approved by the office in cooperation with the comptroller.

(j) The comptroller shall periodically audit counties and municipalities to verify information reported under Subsection (i) and confirm that the county or municipality is conforming with requirements relating to the program. The comptroller shall consult with the office in determining how frequently to conduct audits under this section.

SECTION 10.02. Section 133.058, Local Government Code, is amended by adding Subsection (e) to read as follows:

(e) A municipality or county may not retain a service fee if, during an audit under Section 133.059 of this code or Article 103.0033(j), Code of Criminal Procedure, the comptroller determines that the municipality or county is not in compliance with Article 103.0033, Code of Criminal Procedure. The municipality or county may continue to retain a service fee under this section on receipt of a written confirmation from the comptroller that the municipality or county is in compliance with Article 103.0033, Code of Criminal Procedure.

SECTION 10.03. Section 133.103, Local Government Code, is amended by amending Subsections (b) and (c) and adding Subsection (c-1) to read as follows:

(b) Except as provided by Subsection (c-1), the ~~[The]~~ treasurer shall send 50 percent of the fees collected under this section to the comptroller. The comptroller shall deposit the fees received to the credit of the general revenue fund.

(c) Except as provided by Subsection (c-1), the ~~[The]~~ treasurer shall deposit 10 percent of the fees collected under this section in the general fund of the county or municipality for the purpose of improving the efficiency of the administration of

justice in the county or municipality. The county or municipality shall prioritize the needs of the judicial officer who collected the fees when making expenditures under this subsection and use the money deposited to provide for those needs.

(c-1) The treasurer shall send 100 percent of the fees collected under this section to the comptroller if, during an audit under Section 133.059 of this code or Article 103.0033(j), Code of Criminal Procedure, the comptroller determines that the municipality or county is not in compliance with Article 103.0033, Code of Criminal Procedure. The municipality or county shall continue to dispose of fees as otherwise provided by this section on receipt of a written confirmation from the comptroller that the municipality or county is in compliance with Article 103.0033, Code of Criminal Procedure.

SECTION 10.04. (a) Notwithstanding Subsection (e), Article 103.0033, Code of Criminal Procedure, as added by this article, not later than September 1, 2005, the Office of Court Administration of the Texas Judicial System shall identify those counties and municipalities that are able to implement a collection improvement program under Article 103.0033, Code of Criminal Procedure, as added by this article, before April 1, 2006. Beginning June 1, 2006, the Office of Court Administration of the Texas Judicial System shall comply with Subsection (e), Article 103.0033, Code of Criminal Procedure, as added by this article.

(b) Not later than September 1, 2005, the Office of Court Administration of the Texas Judicial System shall make available on the office's Internet website requirements for a program under Article 103.0033, Code of Criminal Procedure, as added by this article, in accordance with Subsection (g) of Article 103.0033.

ARTICLE 11. INTEREST ON CERTAIN TAX REFUNDS

SECTION 11.01. Section 111.064, Tax Code, is amended by amending Subsections (a), (c), and (f) and adding Subsection (c-1) to read as follows:

(a) Except as otherwise provided by this section, for a refund under this chapter ~~[Subsections (b) and (c), in a comptroller's final decision on a claim for refund or in an audit]~~, interest is at the rate that is the lesser of the annual rate of interest earned on deposits in the state treasury during December of the previous calendar year, as determined by the comptroller, or the rate set in Section 111.060, and accrues on the amount found to be erroneously paid for a period:

(1) beginning on the later of 60 days after the date of payment or the due date of the tax report; and

(2) ending on, as determined by the comptroller, either the date of allowance of credit on account of the comptroller's final decision or audit or a date not more than 10 days before the date of the refund warrant.

(c) For a refund claimed before September 1, 2005, and granted for a report period due on or after January 1, 2000, the rate of interest is the rate set in Section 111.060 ~~[granted for a report period due on or after January 1, 2000, the rate of interest is the rate set in Section 111.060]~~.

(c-1) A refund, without regard to the date claimed, for a report period due before January 1, 2000, does not accrue interest.

(f) A local revenue fund is not subject to Subsections (a)-(c-1) ~~[(a)-(e)]~~. In this subsection, "local revenue fund" includes a court cost, a fee, a fine, or a similar charge collected by a municipality, a county, or a court of this state and remitted to the comptroller.

SECTION 11.02. This article takes effect September 1, 2005.

ARTICLE 12. PUBLIC SCHOOL FACILITIES

SECTION 12.01. Section 46.033, Education Code, is amended to read as follows:

Sec. 46.033. ELIGIBLE BONDS. Bonds, including bonds issued under Section 45.006, are eligible to be paid with state and local funds under this subchapter if:

(1) the district made payments on the bonds during the 2004-2005 ~~[2002-2003]~~ school year or taxes levied to pay the principal of and interest on the bonds were included in the district's audited debt service collections for that school year; and

(2) the district does not receive state assistance under Subchapter A for payment of the principal and interest on the bonds.

SECTION 12.02. Subsection (c), Section 46.034, Education Code, is amended to read as follows:

(c) If the amount required to pay the principal of and interest on eligible bonds in a school year is less than the amount of payments made by the district on the bonds during the 2004-2005 ~~[2002-2003]~~ school year or the district's audited debt service collections for that school year, the district may not receive aid in excess of the amount that, when added to the district's local revenue for the school year, equals the amount required to pay the principal of and interest on the bonds.

ARTICLE 13. COMPENSATION FOR CERTAIN STATE EMPLOYEES WHO RETURN TO STATE EMPLOYMENT

SECTION 13.01. Section 659.042, Government Code, is amended to read as follows:

Sec. 659.042. EXCLUSIONS. The following are not entitled to longevity pay under this subchapter:

- (1) a member of the legislature;
- (2) an individual who holds a statewide office that is normally filled by vote of the people;
- (3) an independent contractor or an employee of an independent contractor;
- (4) a temporary employee;
- (5) an officer or employee of a public junior college; ~~[or]~~
- (6) an academic employee of a state institution of higher education; or
- (7) a state employee who retired from state employment on or after June 1, 2005, and who receives an annuity based wholly or partly on service as a state officer or state employee in a public retirement system, as defined by Section 802.001, that was credited to the state employee.

SECTION 13.02. Subsection (a), Section 659.043, Government Code, is amended to read as follows:

(a) A state employee is entitled to longevity pay to be included in the employee's monthly compensation if the employee:

- (1) is a full-time state employee on the first workday of the month;

(2) is not on leave without pay on the first workday of the month; and

(3) has accrued at least two [~~three~~] years of lifetime service credit not later than the last day of the preceding month.

SECTION 13.03. Section 659.044, Government Code, as amended by Section 32, Chapter 1158, Acts of the 77th Legislature, Regular Session, 2001, and Section 104, Chapter 1158, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Sec. 659.044. AMOUNT. (a) Except as provided by Subsections [~~Subsection~~] (e) and (f), the monthly amount of longevity pay is \$20 for every two [~~three~~] years of lifetime service credit.

(b) The amount increases when the 4th, 6th, 8th [~~9th~~], 10th, 12th, 14th [~~15th~~], 16th, 18th, 20th [~~21st~~], 22nd, 24th, 26th [~~27th~~], 28th, 30th, 32nd [~~33rd~~], 34th, 36th, 38th [~~39th~~], 40th, and 42nd years of lifetime service credit are accrued.

(c) An increase is effective beginning with the month following the month in which the 4th, 6th, 8th [~~9th~~], 10th, 12th, 14th [~~15th~~], 16th, 18th, 20th [~~21st~~], 22nd, 24th, 26th [~~27th~~], 28th, 30th, 32nd [~~33rd~~], 34th, 36th, 38th [~~39th~~], 40th, and 42nd years of lifetime service credit are accrued.

(d) An employee may not receive from the state as longevity pay more than the amount determined under Subsection (a) or (e), as applicable, regardless of the number of positions the employee holds or the number of hours the employee works each week.

(e) This subsection applies only to an employee of the Texas Youth Commission who is receiving less than the maximum amount of hazardous duty pay that the commission may pay to the employee under Section 659.303. The employee's monthly amount of longevity pay is the sum of:

(1) \$4 for each year of lifetime service credit, which may not include any period served in a hazardous duty position; and

(2) the lesser of:

(A) \$4 for each year served in a hazardous duty position; or

(B) the difference between:

(i) \$7 for each year served in a hazardous duty position; and

(ii) the amount paid by the commission for each year served in a hazardous duty position.

(f) A state employee who retired from state employment before June 1, 2005, and who returned to state employment before September 1, 2005, is entitled to receive longevity pay. The monthly amount of longevity pay the employee is entitled to receive equals the amount of longevity pay the employee was entitled to receive immediately before September 1, 2005. A state employee who retired from state employment before June 1, 2005, and who returns to state employment on or after September 1, 2005, is not entitled to receive longevity pay.

SECTION 13.04. Section 659.126, Government Code, is amended to read as follows:

Sec. 659.126. LOSS OF ELIGIBILITY TO RECEIVE BENEFIT REPLACEMENT PAY. (a) An eligible state employee who leaves state employment after August 31, 1995, for at least 30 consecutive days [~~42 consecutive months~~], on returning to state employment or on assuming a state office, is ineligible to receive benefit replacement pay.

(b) An eligible state-paid judge who leaves office after August 31, 1995, for at least 30 consecutive days [~~42 consecutive months~~], on return to state office or on accepting a state employment, is ineligible to receive benefit replacement pay.

(c) For purposes of Subsection (a), a state employee is not considered to have left state employment:

(1) while the state employee is on an unpaid leave of absence as provided by Section 661.909; or

(2) during a period of time the employee is not working for the state because the employee's employment with the state customarily does not include that period of time, such as a teacher whose employment does not invariably include the summer months.

(d) An eligible state employee who retired from state employment on or after June 1, 2005, and who receives an annuity based wholly or partly on service as a state officer or state employee in a public retirement system, as defined by Section 802.001, that was credited to the state employee is ineligible to receive benefit replacement pay.

SECTION 13.05. Section 661.152, Government Code, is amended by adding Subsection (l) to read as follows:

(l) For purposes of computing vacation leave under Subsection (d) for a state employee who retired from state employment on or after June 1, 2005, and who receives an annuity based wholly or partly on service as a state officer or state employee in a public retirement system, as defined by Section 802.001, that was credited to the state employee, years of total state employment includes only the length of state employment after the date the state employee retired.

SECTION 13.06. Subsections (a), (b), (c), and (g), Section 659.305, Government Code, are amended to read as follows:

(a) Except as provided by Subsection (b), the amount of a full-time state employee's hazardous duty pay for a particular month is the lesser of:

(1) \$10 [~~\$7~~] for each 12-month period of lifetime service credit accrued by the employee; or

(2) \$300 [~~\$210~~].

(b) This subsection applies only to a state employee whose compensation for services provided to the state during any month before August 1987 included hazardous duty pay that was based on total state service performed before May 29, 1987. The amount of a full-time state employee's hazardous duty pay for a particular month is the sum of:

(1) \$10 [~~\$7~~] for each 12-month period of state service credit the employee finished accruing before May 29, 1987; and

(2) \$10 [~~\$7~~] for each 12-month period of lifetime service credit that the employee accrued after the date, which must be before May 29, 1987, on which the employee finished accruing the last 12-month period of state service credit.

(c) The amount determined under Subsection (b)(2) may not exceed \$300 [~~\$210~~].

(g) A state employee may not receive more than \$10 [~~\$7~~] for each 12-month period of lifetime service credit, regardless of:

(1) the number of positions the employee holds; or

(2) the number of hours the employee works each week.

SECTION 13.07. (a) Except as provided by Subsection (b) of this section, the change in law made by this article to Section 659.126, Government Code, applies only to a state employee who leaves state employment on or after the effective date of this article. A state employee who leaves state employment before the effective date of this article is governed by the law as it existed on the date the employee left state employment and the former law is continued in effect for that purpose.

(b) A state employee who leaves state employment before the effective date of this article is ineligible to receive benefit replacement pay unless the employee returns to state employment before September 30, 2005.

SECTION 13.08. This article takes effect September 1, 2005.

ARTICLE 14. SYSTEM BENEFIT FUND

SECTION 14.01. Subsection (h), Section 39.903, Utilities Code, is amended to read as follows:

(h) The commission shall adopt rules for a retail electric provider to determine a reduced rate for eligible customers to be discounted off the standard retail service package as approved by the commission under Section 39.106, or the price to beat established by Section 39.202, whichever is lower. Municipally owned utilities and electric cooperatives shall establish a reduced rate for eligible customers to be discounted off the standard retail service package established under Section 40.053 or 41.053, as appropriate. The reduced rate for a retail electric provider shall result in a total charge that is at least 10 percent and, if sufficient money in the system benefit fund is available, up to 20 percent, lower than the amount the customer would otherwise be charged. To the extent the system benefit fund is insufficient to fund the initial 10 percent rate reduction, the commission may increase the fee to an amount not more than 65 cents per megawatt hour, as provided by Subsection (b). If the fee is set at 65 cents per megawatt hour or if the commission determines that appropriations are insufficient to fund the 10 percent rate reduction, the commission may reduce the rate reduction to less than 10 percent. For a municipally owned utility or electric cooperative, the reduced rate shall be equal to an amount that can be fully funded by that portion of the nonbypassable fee proceeds paid by the municipally owned utility or electric cooperative that is allocated to the utility or cooperative by the commission under Subsection (e) for programs for low-income customers of the utility or cooperative. The reduced rate for municipally owned utilities and electric cooperatives under this section is in addition to any rate reduction that may result from local programs for low-income customers of the municipally owned utilities or electric cooperatives.

ARTICLE 15. FUNDING OF THE COASTAL PROTECTION FUND AND THE USE OF MONEY IN THE FUND

SECTION 15.01. Section 40.152, Natural Resources Code, is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding Subsection (a)(9) and the other provisions of this subchapter, the legislature may appropriate to the General Land Office for implementation of the coastal management program under Subchapter F, Chapter 33, and for erosion response projects under Subchapter H, Chapter 33, money from the fund in an amount that exceeds the amount of interest accruing to the fund annually. This subsection expires September 1, 2007.

SECTION 15.02. Subsections (a) through (d), Section 40.155, Natural Resources Code, are amended to read as follows:

(a) Except as otherwise provided in this section, the rate of the fee shall be 1-1/3 cents [~~two cents~~] per barrel of crude oil until the commissioner certifies that the unencumbered balance in the fund has reached \$20 [~~\$25~~] million. The commissioner shall certify to the comptroller the date on which the unencumbered balance in the fund exceeds \$20 [~~\$25~~] million. The fee shall not be collected or required to be paid on or after the first day of the second month following the commissioner's certification to the comptroller that the unencumbered balance in the fund exceeds \$20 [~~\$25~~] million.

(b) If the unencumbered balance in the fund falls below \$10 [~~\$14~~] million, the commissioner shall certify such fact to the comptroller. On receiving the commissioner's certification, the comptroller shall resume collecting the fee until suspended in the manner provided in Subsection (a) of this section.

(c) Notwithstanding the provisions of Subsection (a) or (b) of this section, the fee shall be levied at the rate of four cents per barrel if the commissioner certifies to the comptroller a written finding of the following facts:

- (1) the unencumbered balance in the fund is less than \$20 [~~\$25~~] million;
- (2) an unauthorized discharge of oil in excess of 100,000 gallons has occurred within the previous 30 days; and
- (3) expenditures from the fund for response costs and damages are expected to deplete the fund substantially.

(d) In the event of a certification to the comptroller under Subsection (c) of this section, the comptroller shall collect the fee at the rate of four cents per barrel until the unencumbered balance in the fund reaches \$20 [~~\$25~~] million or any lesser amount that the commissioner determines is necessary to pay response costs and damages without substantially depleting the fund. The commissioner shall certify to the comptroller the date on which the unencumbered balance in the fund exceeds \$20 [~~\$25~~] million or such other lesser amount. The fee shall not be collected or required to be paid on or after the first day of the second month following the commissioner's certification to the comptroller.

ARTICLE 16. REIMBURSEMENT OF EXCESSIVE OR

UNFAIRLY DISCRIMINATORY RATES CHARGED BY CERTAIN INSURERS

SECTION 16.01. Article 5.144, Insurance Code, is amended by amending Subsection (b) and adding Subsections (b-1) and (b-2) to read as follows:

(b) Except as provided by Subsection (d) of this article, if the commissioner determines that an insurer has charged a rate for personal automobile insurance or residential property insurance that is excessive or unfairly discriminatory, as described by Article 5.13-2 [~~or 5.101~~] of this code, the commissioner may order the insurer to:

(1) issue a refund of the excessive or unfairly discriminatory portion of the premium, plus interest on that amount, directly to each affected policyholder if the amount of that portion of the premium is at least 7.5 percent of the total premium charged for the coverage; or

(2) if the amount of that portion of the premium is less than 7.5 percent:

(A) provide each affected policyholder who renews the policy a future premium discount in the amount of the excessive or unfairly discriminatory portion of the premium, plus interest on that amount; and

(B) provide each affected policyholder who does not renew or whose coverage is otherwise terminated a refund in the amount described by Subdivision (1) of this subsection.

(b-1) The rate for interest assessed under Subsection (b) of this article is the prime rate for the calendar year in which the order is issued plus six percent. For purposes of this subsection, the prime rate is the prime rate as published in The Wall Street Journal for the first day of the calendar year that is not a Saturday, Sunday, or legal holiday. The interest accrues beginning on the date on which the department first provides the insurer with formal written notice that the insurer's filed rate is excessive or unfairly discriminatory, as determined by the commissioner, and continues to accrue until the refund is paid. An insurer may not be required to pay any interest penalty or refund if the insurer prevails in a final appeal of the commissioner's order under Subchapter D, Chapter 36 of this code.

(b-2) An insurer may not claim a premium tax credit to which the insurer is otherwise entitled unless the insurer has complied with this article.

ARTICLE 17. CERTAIN PROVISIONS RELATING TO RETIREMENT SYSTEM CONTRIBUTIONS AND BENEFITS FOR RETIRED SCHOOL EMPLOYEES

SECTION 17.01. Subsection (a), Section 825.404, Government Code, is amended to read as follows:

(a) During each fiscal year, the state shall contribute to the retirement system an amount equal to at least six and not more than 10 ~~[eight]~~ percent of the aggregate annual compensation of all members of the retirement system during that fiscal year.

SECTION 17.02. Subsection (a), Section 1575.203, Insurance Code, is amended to read as follows:

(a) Each state fiscal year, each active employee shall, as a condition of employment, contribute to the fund an amount equal to 0.65 ~~[0.5]~~ percent of the employee's salary.

SECTION 17.03. The change in law made by this article to Section 1575.203, Insurance Code, takes effect September 1, 2005.

ARTICLE 18. COMPENSATION SUPPLEMENTATION FOR CERTAIN SCHOOL EMPLOYEES

SECTION 18.01. Subsections (a), (b), (c), (i), and (j), Section 22.004, Education Code, are amended to read as follows:

(a) A district shall participate in the uniform group coverage program established under Chapter 1579 ~~[Article 3.50-7]~~, Insurance Code, as provided by Subchapter D [Section 5] of that chapter ~~[article]~~.

(b) A district that does not participate in the program described by Subsection (a) shall make available to its employees group health coverage provided by a risk pool established by one or more school districts under Chapter 172, Local Government Code, or under a policy of insurance or group contract issued by an insurer, a company subject to Chapter 842, Insurance Code, or a health maintenance organization under Chapter 843, Insurance Code. The coverage must meet the substantive coverage requirements of Chapter 1251, Subchapter A, Chapter 1364, and Subchapter A, Chapter 1366 [~~Article 3.51-6~~], Insurance Code, and any other law applicable to group health insurance policies or contracts issued in this state. The coverage must include major medical treatment but may exclude experimental procedures. In this subsection, "major medical treatment" means a medical, surgical, or diagnostic procedure for illness or injury. The coverage may include managed care or preventive care and must be comparable to the basic health coverage provided under Chapter 1551, Insurance Code. The board of trustees of the Teacher Retirement System of Texas shall adopt rules to determine whether a school district's group health coverage is comparable to the basic health coverage specified by this subsection. The rules must provide for consideration of the following factors concerning the district's coverage in determining whether the district's coverage is comparable to the basic health coverage specified by this subsection:

- (1) the deductible amount for service provided inside and outside of the network;
- (2) the coinsurance percentages for service provided inside and outside of the network;
- (3) the maximum amount of coinsurance payments a covered person is required to pay;
- (4) the amount of the copayment for an office visit;
- (5) the schedule of benefits and the scope of coverage;
- (6) the lifetime maximum benefit amount; and
- (7) verification that the coverage is issued by a provider licensed to do business in this state by the Texas Department of Insurance or is provided by a risk pool authorized under Chapter 172, Local Government Code, or that a district is capable of covering the assumed liabilities in the case of coverage provided through district self-insurance.

(c) The cost of the coverage provided under the program described by Subsection (a) shall be paid by the state, the district, and the employees in the manner provided by Subchapter F, Chapter 1579 [~~Article 3.50-7~~], Insurance Code. The cost of coverage provided under a plan adopted under Subsection (b) shall be shared by the employees and the district using the contributions by the state described by Subchapter F, Chapter 1579 [~~Section 9, Article 3.50-7~~], Insurance Code, or Subchapter D [~~by Article 3.50-8, Insurance Code~~].

(i) Notwithstanding any other provision of this section, a district participating in the uniform group coverage program established under Chapter 1579 [~~Article 3.50-7~~], Insurance Code, may not make group health coverage available to its employees under this section after the date on which the program of coverages provided under Chapter 1579 [~~Article 3.50-7~~], Insurance Code, is implemented.

(j) This section does not preclude a district that is participating in the uniform group coverage program established under Chapter 1579 [Article 3.50-7], Insurance Code, from entering into contracts to provide optional insurance coverages for the employees of the district.

SECTION 18.02. Chapter 22, Education Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. COMPENSATION SUPPLEMENTATION

Sec. 22.101. DEFINITIONS. In this subchapter:

(1) "Cafeteria plan" means a plan as defined and authorized by Section 125, Internal Revenue Code of 1986.

(2) "Employee" means an active, contributing member of the Teacher Retirement System of Texas who:

(A) is employed by a district, other educational district whose employees are members of the Teacher Retirement System of Texas, participating charter school, or regional education service center;

(B) is not a retiree eligible for coverage under the program established under Chapter 1575, Insurance Code;

(C) is not eligible for coverage by a group insurance program under Chapter 1551 or 1601, Insurance Code; and

(D) is not an individual performing personal services for a district, other educational district that is a member of the Teacher Retirement System of Texas, participating charter school, or regional education service center as an independent contractor.

(3) "Participating charter school" means an open-enrollment charter school established under Subchapter D, Chapter 12, that participates in the program established under Chapter 1579, Insurance Code.

(4) "Regional education service center" means a regional education service center established under Chapter 8.

Sec. 22.102. AUTHORITY TO ADOPT RULES; OTHER AUTHORITY.

(a) The agency may adopt rules to implement this subchapter.

(b) The agency may enter into interagency contracts with any other agency of this state for the purpose of assistance in implementing this subchapter.

Sec. 22.103. ELIGIBILITY; WAITING PERIOD. A person is not eligible for a monthly distribution under this subchapter before the 91st day after the first day the person becomes an employee.

Sec. 22.104. DISTRIBUTION BY AGENCY. Subject to the availability of funds, each month the agency shall deliver to each district, including a district that is ineligible for state aid under Chapter 42, each other educational district that is a member of the Teacher Retirement System of Texas, each participating charter school, and each regional education service center state funds in an amount, as determined by the agency, equal to the product of the number of eligible employees employed by the district, school, or service center multiplied by the amount specified in the General Appropriations Act for purposes of this subchapter and divided by 12. The agency shall distribute funding to only one entity for employees who are employed by more than one entity listed in this section.

Sec. 22.105. FUNDS HELD IN TRUST. All funds received by a district, other educational district, participating charter school, or regional education service center under this subchapter are held in trust for the benefit of the employees on whose behalf the district, school, or service center received the funds.

Sec. 22.106. RECOVERY OF DISTRIBUTIONS. The agency is entitled to recover from a district, other educational district, participating charter school, or regional education service center any amount distributed under this subchapter to which the district, school, or service center was not entitled.

Sec. 22.107. DETERMINATION BY AGENCY FINAL. A determination by the agency under this subchapter is final and may not be appealed.

Sec. 22.108. DISTRIBUTION BY SCHOOL. Each month, each district, other educational district that is a member of the Teacher Retirement System of Texas, participating charter school, and regional education service center must distribute to its eligible employees the funding received under this subchapter. To receive the monthly distribution, an individual must meet the definition of an employee under Section 22.101 for that month.

Sec. 22.109. USE OF SUPPLEMENTAL COMPENSATION. An employee may use a monthly distribution received under this subchapter for any employee benefit, including depositing the amount of the distribution into a cafeteria plan, if the employee is enrolled in a cafeteria plan, or using the amount of the distribution for health care premiums through a premium conversion plan. The employee may take the amount of the distribution as supplemental compensation.

Sec. 22.110. SUPPLEMENTAL COMPENSATION. An amount distributed to an employee under this subchapter must be in addition to the rate of compensation that:

(1) the district, other educational district, participating charter school, or regional education service center paid the employee in the preceding school year; or

(2) the district, school, or service center would have paid the employee in the preceding school year if the employee had been employed by the district, school, or service center in the same capacity in the preceding school year.

SECTION 18.03. Subsection (c), Section 822.201, Government Code, is amended to read as follows:

(c) Excluded from salary and wages are:

(1) expense payments;

(2) allowances;

(3) payments for unused vacation or sick leave;

(4) maintenance or other nonmonetary compensation;

(5) fringe benefits;

(6) deferred compensation other than as provided by Subsection (b)(3);

(7) compensation that is not made pursuant to a valid employment agreement;

(8) payments received by an employee in a school year that exceed \$5,000 for teaching a driver education and traffic safety course that is conducted outside regular classroom hours;

(9) the benefit replacement pay a person earns as a result of a payment made under Subchapter B or C, Chapter 661;

(10) any amount [contributions to a health reimbursement arrangement account] received by an employee under Subchapter D, Chapter 22, Education Code, former Article 3.50-8, Insurance Code, former Chapter 1580, Insurance Code, or Rider 9, page III-39, Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003 (the General Appropriations Act); and

(11) any compensation not described by Subsection (b).

SECTION 18.04. Subsection (b), Section 1579.253, Insurance Code, is amended to read as follows:

(b) The employee may pay the employee's contribution under this subsection from the amount distributed to the employee under Subchapter D, Chapter 22, Education Code [1580].

SECTION 18.05. Section 1581.702, Insurance Code, is amended to read as follows:

Sec. 1581.702. ADDITIONAL SUPPORT. The state shall provide additional support for a school district to which this section applies in an amount computed by multiplying the total amount of supplemental compensation received by district employees under Subchapter D, Chapter 22, Education Code, [1580] by 0.062.

SECTION 18.06. The following laws are repealed:

- (1) Chapter 1580, Insurance Code;
- (2) Section 57, Chapter 201, Acts of the 78th Legislature, Regular Session, 2003;
- (3) Chapter 313, Acts of the 78th Legislature, Regular Session, 2003; and
- (4) Section 1.01, Chapter 366, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 18.07. The functions and duties of the Teacher Retirement System of Texas with respect to the compensation supplementation program established under Chapter 1580, Insurance Code, and other applicable law, and any appropriation relating to that program are transferred to the Texas Education Agency. A reference in law to the Teacher Retirement System of Texas with respect to the compensation supplementation program means the Texas Education Agency.

SECTION 18.08. This article takes effect September 1, 2005.

ARTICLE 19. RETIREMENT SYSTEM CONTRIBUTIONS FOR CERTAIN MEMBERS OF THE TEACHER RETIREMENT SYSTEM OF TEXAS

SECTION 19.01. Subchapter E, Chapter 825, Government Code, is amended by adding Section 825.4041 to read as follows:

Sec. 825.4041. EMPLOYER PAYMENTS. (a) For purposes of this section, a new member is a person first employed on or after September 1, 2005, including a former member who withdrew retirement contributions under Section 822.003 and is reemployed on or after September 1, 2005.

(b) During each fiscal year, an employer shall pay an amount equal to the state contribution rate, as established by the General Appropriations Act for the fiscal year, applied to the aggregate compensation of new members of the retirement system, as described by Subsection (a), during their first 90 days of employment.

(c) On a monthly basis an employer shall:

(1) report to the retirement system, in a form prescribed by the system, a certification of the total amount of salary paid during the first 90 days of employment of a new member and the total amount of employer payments due under this section for the payroll periods; and

(2) retain information, as determined by the retirement system, sufficient to allow administration of this section, including information for each employee showing the applicable salary as well as aggregate compensation for the first 90 days of employment for new employees.

(d) A person who was hired before September 1, 2005, and was subject to a 90-day waiting period for membership in the retirement system becomes eligible to participate in the retirement system as a member starting September 1, 2005. For the purpose of this section, the member shall be treated as a new member for the remainder of the waiting period.

(e) The employer must remit the amount required under this section to the retirement system at the same time the employer remits the member's contribution. In computing the amount required to be remitted, the employer shall include compensation paid to an employee for the entire pay period that contains the 90th calendar day of new employment.

(f) At the end of each school year, the retirement system shall certify to the commissioner of education and to the state auditor:

(1) the name of each employer that has failed to remit, within the period required by Section 825.408, all payments required under this section for the school year; and

(2) the amounts of the unpaid required payments.

(g) If the commissioner of education or the state auditor receives a certification under Subsection (f), the commissioner or the state auditor shall direct the comptroller to withhold the amount certified, plus interest computed at the rate and in the manner provided by Section 825.408, from the first state money payable to the employer. The amount withheld shall be deposited to the credit of the appropriate accounts of the retirement system.

(h) The board of trustees shall take this section into consideration in adopting the biennial estimate of the amount necessary to pay the state's contributions to the retirement system.

SECTION 19.02. This article takes effect September 1, 2005.

ARTICLE 20. EFFECTIVE DATE

SECTION 20.01. Except as otherwise provided by this Act, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, except as otherwise provided by this Act, this Act takes effect on the 91st day after the last day of the legislative session.

The Conference Committee Report on **SB 1863** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 10**

Senator Ogden submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate
Honorable Tom Craddick
Speaker of the House of Representatives
Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 10** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

OGDEN
ZAFFIRINI
WHITMIRE
DUNCAN
AVERITT

PITTS
J. DAVIS
GUILLEN

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 10** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2027**

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate
Honorable Tom Craddick
Speaker of the House of Representatives
Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2027** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ARMBRISTER
JACKSON
LUCIO
FRASER

HILDERBRAN
BAXTER
PHILLIPS

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2027** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2491**

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2491** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ARMBRISTER
ELTIFE
SELIGER

PUENTE
CRABB
OTTO
PAXTON
RODRIGUEZ

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2491** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 3333**

Senator Madla submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3333** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

MADLA
BRIMER
DEUELL
DUNCAN
SHAPLEIGH

CHAVEZ
HILL
HUNTER
CAMPBELL

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 3333** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 265**

Senator Eltife submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 265** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ELTIFE
BRIMER
FRASER
GALLEGOS

W. SMITH
HOWARD
MCREYNOLDS
PICKETT
WEST

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 265** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1772**

Senator Fraser submitted the following Conference Committee Report:

Austin, Texas
May 27, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1772** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

FRASER
BRIMER
ARMBRISTER
WENTWORTH

MILLER
CASTEEL
ROSE
LEIBOWITZ
MOWERY

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 1772** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1773**

Senator Averitt submitted the following Conference Committee Report:

Austin, Texas
May 27, 2005

Honorable David Dewhurst
President of the Senate
Honorable Tom Craddick
Speaker of the House of Representatives
Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1773** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

AVERITT
BRIMER
DEUELL
GALLEGOS
MADLA
On the part of the Senate

MILLER
HILL
HAMILTON
QUINTANILLA
URESTI
On the part of the House

The Conference Committee Report on **HB 1773** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1142**

Senator Carona submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate
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 **SB 1142** 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
LUCIO
ELTIFE
AVERITT
OGDEN
On the part of the Senate

HAMRIC
DUKES
HILDERBRAN
HODGE
HUNTER
On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the creation of a film industry incentive program.

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

SECTION 1. Sections 485.001 through 485.007, Government Code, are designated as Subchapter A, Chapter 485, Government Code, and a subchapter heading is added to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 2. Chapter 485, Government Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. FILM INDUSTRY INCENTIVE PROGRAM

Sec. 485.021. DEFINITIONS. In this subchapter:

(1) "Filmed entertainment" means a visual and sound production, including
a:

(A) film;

(B) television program; or

(C) national or multistate commercial.

(2) "Production company" includes a film production company, television production company, or film and television production company.

(3) "Texas resident" means an individual who has resided in Texas since the 60th day before the first day of principal photography on a filmed entertainment.

(4) "Underused area" includes any area of this state other than the metropolitan areas of Austin, Houston, or Dallas-Fort Worth.

Sec. 485.022. FILM INDUSTRY INCENTIVE PROGRAM. (a) The office shall administer a grant program for production companies that produce filmed entertainments in this state, to the extent that gifts, grants, donations, or other money, including appropriations, are made available to the office for that purpose.

(b) The office shall develop a procedure for the submission of grant applications and the awarding of grants under this subchapter. The procedure must include provisions relating to:

(1) methods by which an individual's Texas residency as described by Section 485.021(3) can be proved; and

(2) requirements for the submission, before production of a filmed entertainment begins, of an estimate of total wages that will be paid to Texas residents.

(c) The office may accept gifts, grants, and donations for the purpose of implementing this subchapter.

Sec. 485.023. QUALIFICATION. To qualify for a grant under this subchapter, a production company must pay a minimum of:

(1) \$500,000 in wages to Texas residents for a film or television program; or

(2) \$50,000 in wages to Texas residents for a commercial or series of commercials.

Sec. 485.024. GRANT. (a) Except as provided by Section 485.025, a grant under this subchapter may not exceed the lesser of:

(1) 20 percent of the wages paid to Texas residents for a filmed entertainment; or

(2) \$750,000.

(b) In calculating a grant amount under Subsection (a), the office may not include wages of persons, including an actor or director, employed in the production of a filmed entertainment that are:

(1) a major part of the production costs of the entertainment, as determined by the office; and

(2) negotiated or spent before production begins.

Sec. 485.025. ADDITIONAL GRANT FOR UNDERUSED AREAS. In addition to the grant calculated under Section 485.024, a production company that spends at least 25 percent of a filmed entertainment's filming days in an underused area is eligible for an additional grant in an amount equal to five percent of the wages paid to Texas residents for the filmed entertainment.

Sec. 485.026. STATE DEBT. If a production company owes money to the state at the time the production company is awarded a grant under this subchapter, the office shall offset the amount owed to the state from the amount awarded.

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

The Conference Committee Report on **SB 1142** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1297

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 1297** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ARMBRISTER
JACKSON
GALLEGOS
FRASER

On the part of the Senate

TALTON
HILDERBRAN
VAN ARSDALE

On the part of the House

A BILL TO BE ENTITLED AN ACT

relating to the elements of the criminal offense of discharging used oil into water in the state.

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

SECTION 1. Subsection (a), Section 7.147, Water Code, is amended to read as follows:

(a) A person commits an offense if the person discharges or allows the discharge of any waste or pollutant into any water in the state that causes or threatens to cause water pollution unless the waste or pollutant:

(1) is discharged in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency; or

(2) consists of used oil and the concentration of used oil in the waste stream resulting from the discharge as it enters water in the state is less than 15 parts per million following the discharge and the person is authorized to discharge storm water under a general permit issued under Section 26.040.

SECTION 2. Subsection (a), Section 7.176, Water Code, is amended to read as follows:

(a) A person commits an offense if the person:

(1) intentionally discharges used oil into:

(A) a sewer or ~~drainage system~~, septic tank; or

(B) a drainage system, surface water or groundwater, a watercourse, or marine water unless the concentration of used oil in the waste stream resulting from the discharge as it enters water in the state is less than 15 parts per million following the discharge and the person is authorized to discharge storm water under a general permit issued under Section 26.040;

(2) knowingly mixes or commingles used oil with solid waste that is to be disposed of in landfills or directly disposes of used oil on land or in landfills, unless the mixing or commingling of used oil with solid waste that is to be disposed of in landfills is incident to and the unavoidable result of the mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals;

(3) knowingly transports, treats, stores, disposes of, recycles, causes to be transported, or otherwise handles any used oil within the state:

(A) in violation of standards or rules for the management of used oil; or

(B) without first complying with the registration requirements of Chapter 371, Health and Safety Code, and rules adopted under that chapter;

(4) intentionally applies used oil to roads or land for dust suppression, weed abatement, or other similar uses that introduce used oil into the environment;

(5) violates an order of the commission to cease and desist an activity prohibited by this section or a rule applicable to a prohibited activity; or

(6) intentionally makes a false statement or representation in an application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of program compliance.

SECTION 3. (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 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 covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2005.

The Conference Committee Report on **SB 1297** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2048**

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas
May 27, 2005

Honorable David Dewhurst
President of the Senate
Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2048** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ELLIS
ELTIFE
NELSON
WILLIAMS

On the part of the Senate

URESTI
HUPP
NORIEGA

On the part of the House

The Conference Committee Report on **HB 2048** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 260**

Senator Averitt submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate
Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 260** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

AVERITT
DUNCAN
HARRIS
WENTWORTH

On the part of the Senate

NIXON
STRAMA
PHILLIPS
CASTEEL

On the part of the House

The Conference Committee Report on **HB 260** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 580**

Senator Gallegos submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 580** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

GALLEGOS
ARMBRISTER
JACKSON
LINDSAY
WENTWORTH

W. SMITH
R. ALLEN
BONNEN
HOWARD

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 580** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2201**

Senator Estes submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2201** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ESTES
ELTIFE
FRASER
JACKSON
SELIGER

HUGHES
R. COOK
HOPSON
P. KING

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2201** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2161**

Senator Seliger submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2161** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

SELIGER
DEUELL
ESTES

WEST
CRABB
CROWNOVER
GONZALEZ TOUREILLES
HOWARD

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2161** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2421**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2421** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ZAFFIRINI
WEST
FRASER
SHAPIRO
CARONA

CHAVEZ
RITTER
MORRISON
SEAMAN

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2421** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 52**

Senator Nelson submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 52** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

NELSON
ARMBRISTER
CARONA
HINOJOSA

HUPP
J. DAVIS
REYNA

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to a competitive grant program for aging and disability services.

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

SECTION 1. Section 142.0174, Health and Safety Code, is amended to read as follows:

Sec. 142.0174. USE OF ADMINISTRATIVE PENALTY ~~[DEPOSITED TO STATE TREASURY]~~. An administrative penalty collected under this subchapter may ~~[shall]~~ be appropriated for the purpose of funding the grant program established under Section 161.074, Human Resources Code ~~[deposited in the state treasury to the credit of the general revenue fund]~~.

SECTION 2. Subchapter C, Chapter 242, Health and Safety Code, is amended by adding Section 242.0695 to read as follows:

Sec. 242.0695. USE OF ADMINISTRATIVE PENALTY. Money from an administrative penalty collected under this subchapter may be appropriated for the purpose of funding the grant program established under Section 161.074, Human Resources Code.

SECTION 3. Subchapter C, Chapter 247, Health and Safety Code, is amended by adding Section 247.0458 to read as follows:

Sec. 247.0458. USE OF ADMINISTRATIVE PENALTY. Money from an administrative penalty collected under this subchapter may be appropriated for the purpose of funding the grant program established under Section 161.074, Human Resources Code.

SECTION 4. Section 252.069, Health and Safety Code, is amended to read as follows:

Sec. 252.069. USE OF ADMINISTRATIVE PENALTY ~~[DEPOSITED TO STATE TREASURY]~~. An administrative penalty collected under this subchapter may ~~[shall]~~ be appropriated for the purpose of funding the grant program established under Section 161.074, Human Resources Code ~~[deposited in the state treasury to the credit of the general revenue fund]~~.

SECTION 5. Subchapter D, Chapter 161, Human Resources Code, is amended by adding Section 161.074 to read as follows:

Sec. 161.074. COMPETITIVE GRANT PROGRAM. (a) The department shall establish a competitive grant program that promotes innovation in the delivery of aging and disability services and improves the quality of life for individuals receiving those services.

(b) A grant awarded by the department under the program shall be used to:

(1) test innovative practices in the provision of aging and disability services;

or

(2) disseminate information regarding innovative practices being used to provide aging and disability services.

(c) The department shall request proposals for the award of a grant under the program. The department shall evaluate the proposals and award a grant based on a proposal's academic soundness, quantifiable effectiveness, and potentially positive impact on the delivery of aging and disability services.

(d) A grant awarded under Subsection (b)(1) must be made to an institution of higher education working in cooperation with a private entity that has committed resources to the project described in the proposal.

(e) A grant recipient may use grant money received under this section only to pay for activities directly related to the purpose of the grant program as described by Subsection (b) and may not use grant money for fees or advertising.

(f) The department shall establish procedures to administer the grant program, including a procedure for the submission of a proposal and a procedure to be used by the department to evaluate a proposal.

(g) The department shall enter into a contract that includes performance requirements with each grant recipient. The department shall monitor and enforce the terms of the contract. The contract must authorize the department to recoup grant money from a grant recipient for failure of the grant recipient to comply with the terms of the contract.

(h) The department shall post on its website a summary of each grant awarded under this section.

(i) The legislature may appropriate money described by Sections 142.0174, 242.0695, 247.0458, and 252.069, Health and Safety Code, including unexpended and unobligated amounts collected during a previous state fiscal biennium, to fund the grant program authorized by this section.

SECTION 6. Section 242.405, Health and Safety Code, is repealed.

SECTION 7. It is the intent of the legislature that the Department of Aging and Disability Services shall establish the grant program authorized by Section 161.074, Human Resources Code, as added by this Act, only if the department determines that the administrative penalties described by Sections 142.0174, 242.0695, 247.0458, and 252.069, Health and Safety Code, are sufficient to fund the grants to be awarded.

SECTION 8. This Act takes effect September 1, 2005.

The Conference Committee Report on **SB 52** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1225**

Senator Duncan submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1225** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

DUNCAN
ARMBRISTER
MADLA
STAPLES

PUENTE
BONNEN
CAMPBELL
GEREN
TURNER

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 1225** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2793**

Senator Jackson submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2793** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

JACKSON
HARRIS
LUCIO
SHAPLEIGH

BONNEN
HOMER
T. KING
KUEMPEL

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2793** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1188**

Senator Nelson submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 1188** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

NELSON
CARONA
LUCIO

On the part of the Senate

DELISI
DAWSON

MCREYNOLDS

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to the medical assistance program and other health and human services.

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

SECTION 1. COMMUNITY COLLABORATION. Subchapter A, Chapter 531, Government Code, is amended by adding Section 531.020 to read as follows:

Sec. 531.020. OFFICE OF COMMUNITY COLLABORATION. The executive commissioner shall establish within the commission an office of community collaboration. The office is responsible for:

(1) collaborating with community, state, and federal stakeholders to improve the elements of the health care system that are involved in the delivery of Medicaid services; and

(2) sharing with Medicaid providers, including hospitals, any best practices, resources, or other information regarding improvements to the health care system.

SECTION 2. MEDICAID FINANCING. (a) Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.02113 to read as follows:

Sec. 531.02113. OPTIMIZATION OF MEDICAID FINANCING. The commission shall ensure that the Medicaid finance system is optimized to:

(1) maximize the state's receipt of federal funds;

(2) create incentives for providers to use preventive care;

(3) increase and retain providers in the system to maintain an adequate provider network;

(4) more accurately reflect the costs borne by providers; and

(5) encourage the improvement of the quality of care.

(b) Section 32.042, Human Resources Code, is amended by amending Subsections (a), (b), (d), and (e) and adding Subsection (b-1) to read as follows:

(a) An insurer shall maintain a file system that contains:

(1) the name, address, including claim submission address, group policy number, employer's mailing address, social security number, and date of birth of each enrollee, beneficiary, subscriber, or policyholder covered by the insurer; and

(2) the name, address, including claim submission address, and date of birth of each dependent of each enrollee, beneficiary, subscriber, or policyholder covered by the insurer.

(b) The state's Medicaid third-party recovery division shall identify state medical assistance recipients who have third-party health coverage or insurance as provided by this subsection. The department may:

(1) ~~shall~~ provide to an insurer Medicaid data tapes that identify medical assistance recipients and request that the insurer identify each enrollee, beneficiary, subscriber, or policyholder of the insurer whose name also appears on the Medicaid data tape; or

(2) request that an insurer provide to the department identifying information for each enrollee, beneficiary, subscriber, or policyholder of the insurer.

(b-1) An insurer from which the department requests information under Subsection (b) shall provide that information, except that the ~~[An insurer shall comply with a request under this subsection not later than the 60th day after the date the request was made. An]~~ insurer is only required ~~[under this subsection]~~ to provide the department with the information maintained under Subsection (a) by the insurer or made available to the insurer from the plan. A plan administrator is subject to Subsection (b) and shall provide information under that ~~[this]~~ subsection to the extent the information ~~[described in this subsection]~~ is made available to the plan administrator from the insurer or plan.

(d) An insurer shall provide the information required under Subsection (b)(1) ~~[this section]~~ only if the department certifies that the identified individuals are applicants for or recipients of services under Medicaid or are legally responsible for an applicant for or recipient of Medicaid services.

(e) The department shall enter into an agreement to reimburse an insurer or plan administrator for necessary and reasonable costs incurred in providing information requested under Subsection (b)(1), not to exceed \$5,000 for each data match made under that subdivision. If the department makes a data match using information provided under Subsection (b)(2), the department shall reimburse the insurer or plan administrator for reasonable administrative expenses incurred in providing the information. The reimbursement for information under Subsection (b)(2) may not exceed \$5,000 for initially producing information with respect to a person, or \$200 for each subsequent production of information with respect to the person ~~[this section]~~. The department may enter into an agreement with an insurer or plan administrator ~~[insurers]~~ that provides procedures for requesting and providing information under this section. An agreement under this subsection may not be inconsistent with any law relating to the confidentiality or privacy of personal information or medical records. The procedures agreed to under this subsection must state the time and manner the procedures take effect.

(c) The Health and Human Services Commission shall:

(1) examine the possibility of using existing state funds, including existing state funds for the county indigent health care program and the area health education centers in this state, on health-related programs to maximize receipt of additional federal Medicaid funds;

(2) subject to availability of funds, increase Medicaid reimbursement rates for hospitals and physicians to better align those rates with Medicare and private-pay reimbursement rates;

(3) examine the possibility of a program under which intergovernmental transfers are used to support graduate medical education in support of the Medicaid program and, if cost-effective, implement that program;

(4) examine the possibility of a program that includes comprehensive outpatient rehabilitation facilities in the prospective payment systems methodology and, if cost-effective, implement that program;

(5) examine the possibility of developing Medicaid waivers for intergovernmental transfers from local entities similar to those used in the demonstration projects under Chapter 534, Government Code;

(6) examine the possibility of developing a Medicaid waiver program to allow local governmental entities as well as private employers to buy into the Medicaid or children's health insurance programs and, if cost-effective, implement that program;

(7) examine the possibility of using employer contributions and donations to expand eligibility and funding for the Medicaid and children's health insurance programs and, if cost-effective, implement that option; and

(8) examine the possibility of providing a tax incentive in the form of an ad valorem, franchise, or sales tax credit for employers to enable those employers to pay the state's portion of the premiums for Medicaid or children's health insurance for employees whose family income does not exceed 200 percent of the federal poverty limit and, if cost-effective, implement that option.

(d) If the Health and Human Services Commission chooses to increase reimbursement rates for any providers under Subdivision (2), Subsection (c) of this section, the commission shall give priority to providers serving medically underserved areas, those who treat a high volume of Medicaid patients, and those who provide care that is an alternative to care in an emergency department.

SECTION 3. COLLECTION AND ANALYSIS OF INFORMATION.

(a) Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.02141 to read as follows:

Sec. 531.02141. MEDICAID INFORMATION COLLECTION AND ANALYSIS. (a) The commission shall make every effort to improve data analysis and integrate available information associated with the Medicaid program. The commission shall use the decision support system in the commission's center for strategic decision support for this purpose and shall modify or redesign the system to allow for the data collected by the Medicaid program to be used more systematically and effectively for Medicaid program evaluation and policy development. The commission shall develop or redesign the system as necessary to ensure that the system:

(1) incorporates program enrollment, utilization, and provider data that are currently collected;

(2) allows data manipulation and quick analysis to address a large variety of questions concerning enrollment and utilization patterns and trends within the program;

(3) is able to obtain consistent and accurate answers to questions;

(4) allows for analysis of multiple issues within the program to determine whether any programmatic or policy issues overlap or are in conflict;

(5) includes predefined data reports on utilization of high-cost services that allow program management to analyze and determine the reasons for an increase or decrease in utilization and immediately proceed with policy changes, if appropriate;

(6) includes any encounter data with respect to recipients that a managed care organization that contracts with the commission under Chapter 533 receives from a health care provider under the organization's provider network; and

(7) links Medicaid and non-Medicaid data sets, including data sets related to the Medicaid program, the Temporary Assistance for Needy Families program, the Special Supplemental Nutrition Program for Women, Infants, and Children, vital statistics, and other public health programs.

(b) The commission shall ensure that all Medicaid data sets created or identified by the decision support system are made available on the Internet to the extent not prohibited by federal or state laws regarding medical privacy or security. If privacy concerns exist or arise with respect to making the data sets available on the Internet, the system and the commission shall make every effort to make the data available through that means either by removing information by which particular individuals may be identified or by aggregating the data in a manner so that individual records cannot be associated with particular individuals.

(b) The Health and Human Services Commission shall allow for sufficient opportunities for stakeholder input in the modification or redesign of the decision support system in the commission's center for strategic decision support as required by Section 531.02141, Government Code, as added by this section. The commission may provide these opportunities through:

(1) existing mechanisms, such as regional advisory committees or public forums; and

(2) meetings involving state and local agencies and other entities involved in the planning, management, or delivery of health and human services in this state.

SECTION 4. ADMINISTRATIVE PROCESSES AND AUDIT REQUIREMENTS. (a) Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.02411 and 531.02412 to read as follows:

Sec. 531.02411. STREAMLINING ADMINISTRATIVE PROCESSES. The commission shall make every effort using the commission's existing resources to reduce the paperwork and other administrative burdens placed on Medicaid recipients and providers and other participants in the Medicaid program and shall use technology and efficient business practices to decrease those burdens. In addition, the commission shall make every effort to improve the business practices associated with the administration of the Medicaid program by any method the commission determines is cost-effective, including:

(1) expanding the utilization of the electronic claims payment system;
(2) developing an Internet portal system for prior authorization requests;
(3) encouraging Medicaid providers to submit their program participation applications electronically;

(4) ensuring that the Medicaid provider application is easy to locate on the Internet so that providers may conveniently apply to the program;

(5) working with federal partners to take advantage of every opportunity to maximize additional federal funding for technology in the Medicaid program; and

(6) encouraging the increased use of medical technology by providers, including increasing their use of:

(A) electronic communications between patients and their physicians or other health care providers;

(B) electronic prescribing tools that provide up-to-date payer formulary information at the time a physician or other health care practitioner writes a prescription and that support the electronic transmission of a prescription;

(C) ambulatory computerized order entry systems that facilitate physician and other health care practitioner orders at the point of care for medications and laboratory and radiological tests;

(D) inpatient computerized order entry systems to reduce errors, improve health care quality, and lower costs in a hospital setting;

(E) regional data-sharing to coordinate patient care across a community for patients who are treated by multiple providers; and

(F) electronic intensive care unit technology to allow physicians to fully monitor hospital patients remotely.

Sec. 531.02412. SERVICE DELIVERY AUDIT MECHANISMS. (a) The commission shall make every effort to ensure the integrity of the Medicaid program. To ensure that integrity, the commission shall:

(1) perform risk assessments of every element of the Medicaid program and audit those elements of the program that are determined to present the greatest risks;

(2) ensure that sufficient oversight is in place for the Medicaid medical transportation program;

(3) ensure that a quality review assessment of the Medicaid medical transportation program occurs; and

(4) evaluate the Medicaid program with respect to use of the metrics developed through the Texas Health Steps performance improvement plan to guide changes and improvements to the program.

(b) This section does not affect the duty of the Texas Department of Transportation to manage the delivery of transportation services, including the delivery of transportation services for clients of health and human services programs.

(b) To further encourage the use of medical technology by providers under the Medicaid program, the Health and Human Services Commission may enter into a written agreement with a manufacturer, as defined by Section 531.070, Government Code, to accept as a program benefit in lieu of supplemental rebates, as defined by Section 531.070, Government Code, the manufacturer's operation of a pilot program under which the manufacturer supplies those providers with a graphical electronic medical record system and evaluates the benefits and cost-effectiveness of the system.

The program must be operated in a manner that is acceptable to the commission and must be designed to test the benefits and cost-effectiveness on a sufficiently large scale. The manufacturer shall report the results of the program, including an analysis of the program's benefits and cost-effectiveness, to the commission. The commission shall report those results to the 80th Legislature not later than January 15, 2007.

(c) The Health and Human Services Commission shall examine options for standardizing and simplifying the interaction between the Medicaid system and providers regardless of the service delivery system through which a provider provides services and, using existing resources, implement any options that are anticipated to increase the quality of care and contain costs.

SECTION 5. LONG-TERM CARE SERVICES. (a) Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.083 and 531.084 to read as follows:

Sec. 531.083. MEDICAID LONG-TERM CARE SYSTEM. The commission shall ensure that the Medicaid long-term care system provides the broadest array of choices possible for recipients while ensuring that the services are delivered in a manner that is cost-effective and makes the best use of available funds. The commission shall also make every effort to improve the quality of care for recipients of Medicaid long-term care services by:

(1) evaluating the need for expanding the provider base for consumer-directed services and, if the commission identifies a demand for that expansion, encouraging area agencies on aging, independent living centers, and other potential long-term care providers to become providers through contracts with the Department of Aging and Disability Services;

(2) ensuring that all recipients who reside in a nursing facility are provided information about end-of-life care options and the importance of planning for end-of-life care; and

(3) developing policies to encourage a recipient who resides in a nursing facility to receive treatment at that facility whenever possible, while ensuring that the recipient receives an appropriate continuum of care.

Sec. 531.084. MEDICAID LONG-TERM CARE COST CONTAINMENT STRATEGIES. (a) The commission shall make every effort to achieve cost efficiencies within the Medicaid long-term care program. To achieve those efficiencies, the commission shall:

(1) establish a fee schedule for reimbursable incurred medical expenses for dental services controlled in long-term care facilities;

(2) implement a fee schedule for reimbursable incurred medical expenses for durable medical equipment in nursing facilities and ICF-MR facilities;

(3) implement a durable medical equipment fee schedule action plan;

(4) establish a system for private contractors to secure and coordinate the collection of Medicare funds for recipients who are dually eligible for Medicare and Medicaid;

(5) create additional partnerships with pharmaceutical companies to obtain discounted prescription drugs for Medicaid recipients; and

(6) develop and implement a system for auditing the Medicaid hospice care system that provides services in long-term care facilities to ensure correct billing for pharmaceuticals.

(b) The executive commissioner and the commissioner of aging and disability services shall jointly appoint persons to serve on a work group to assist the commission in developing the fee schedule required by Subsection (a)(1). The work group must consist of providers of long-term care services, including dentists and long-term care advocates.

(c) In developing the fee schedule required by Subsection (a)(1), the commission shall consider:

(1) the need to ensure access to dental services for residents of long-term care facilities who are unable to travel to a dental office to obtain care;

(2) the most recent Comprehensive Fee Report published by the National Dental Advisory Service;

(3) the difficulty of providing dental services in long-term care facilities;

(4) the complexity of treating medically compromised patients; and

(5) time-related and travel-related costs incurred by dentists providing dental services in long-term care facilities.

(d) The commission shall annually update the fee schedule required by Subsection (a)(1).

(b) The Health and Human Services Commission shall examine:

(1) the possibility of implementing a program to expand Medicaid home health benefits to include speech pathology services, intravenous therapy, and chemotherapy treatments and, if cost-effective, implement that program;

(2) the possibility of implementing a program to provide respite and other support services to individuals providing daily assistance to persons with Alzheimer's disease or dementia to reduce caregiver burnout and, if cost-effective, implement that program;

(3) the possibility of implementing a program to offer services through state schools to recipients who are living in the community and a program to use funding for community-based services to pay for the services from the state schools and, if cost-effective, implement those programs;

(4) in conjunction with the Department of Aging and Disability Services, the possibility of implementing a program to simplify the administrative procedures for regulating nursing facilities and, if cost-effective, implement that program; and

(5) the possibility of using fee schedules, prior approval processes, and alternative service delivery options to ensure appropriate utilization and payment for Medicaid services and, if cost-effective, implement those schedules, processes, and options.

(c) The Health and Human Services Commission shall study and determine whether polypharmacy reviews for Medicaid recipients receiving long-term care services could identify inappropriate pharmaceutical usage patterns and lead to controlled costs.

(d) Prior to developing and adopting the fee schedule required by Subdivision (1), Subsection (a), Section 531.084, Government Code, as added by this section, the Health and Human Services Commission shall make every effort to expedite the

approval of dental treatment plans and the approval and payment of reimbursable incurred medical expenses for dental services provided to residents of long-term care facilities.

SECTION 6. MEDICAID MANAGED CARE. (a) Section 533.005, Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) A contract between a managed care organization and the commission for the organization to provide health care services to recipients must contain:

(1) procedures to ensure accountability to the state for the provision of health care services, including procedures for financial reporting, quality assurance, utilization review, and assurance of contract and subcontract compliance;

(2) capitation ~~[and provider payment]~~ rates that ensure the cost-effective provision of quality health care;

(3) a requirement that the managed care organization provide ready access to a person who assists recipients in resolving issues relating to enrollment, plan administration, education and training, access to services, and grievance procedures;

(4) a requirement that the managed care organization provide ready access to a person who assists providers in resolving issues relating to payment, plan administration, education and training, and grievance procedures;

(5) a requirement that the managed care organization provide information and referral about the availability of educational, social, and other community services that could benefit a recipient;

(6) procedures for recipient outreach and education;

(7) a requirement that the managed care organization make payment to a physician or provider for health care services rendered to a recipient under a managed care plan not later than the 45th day after the date a claim for payment is received with documentation reasonably necessary for the managed care organization to process the claim, or within a period, not to exceed 60 days, specified by a written agreement between the physician or provider and the managed care organization;

(8) a requirement that the commission, on the date of a recipient's enrollment in a managed care plan issued by the managed care organization, inform the organization of the recipient's Medicaid certification date;

(9) a requirement that the managed care organization comply with Section 533.006 as a condition of contract retention and renewal;

(10) a requirement that the managed care organization provide the information required by Section 533.012 and otherwise comply and cooperate with the commission's office of inspector general ~~[investigations and enforcement]~~;

(11) a requirement that the managed care organization's usages of out-of-network providers or groups of out-of-network providers may not exceed limits for those usages relating to total inpatient admissions, total outpatient services, and emergency room admissions determined by the commission; ~~[and]~~

(12) if the commission finds that a managed care organization has violated Subdivision (11), a requirement that the managed care organization reimburse an out-of-network provider for health care services at a rate that is equal to the allowable rate for those services, as determined under Sections 32.028 and 32.0281, Human Resources Code;

(13) a requirement that the organization use advanced practice nurses in addition to physicians as primary care providers to increase the availability of primary care providers in the organization's provider network;

(14) a requirement that the managed care organization reimburse a federally qualified health center or rural health clinic for health care services provided to a recipient outside of regular business hours, including on a weekend day or holiday, at a rate that is equal to the allowable rate for those services as determined under Section 32.028, Human Resources Code, if the recipient does not have a referral from the recipient's primary care physician; and

(15) a requirement that the managed care organization develop, implement, and maintain a system for tracking and resolving all provider appeals related to claims payment, including a process that will require:

(A) a tracking mechanism to document the status and final disposition of each provider's claims payment appeal;

(B) the contracting with physicians who are not network providers and who are of the same or related specialty as the appealing physician to resolve claims disputes related to denial on the basis of medical necessity that remain unresolved subsequent to a provider appeal; and

(C) the determination of the physician resolving the dispute to be binding on the managed care organization and provider.

(c) The executive commissioner shall adopt rules regarding the days, times of days, and holidays that are considered to be outside of regular business hours for purposes of Subsection (a)(14).

(b) Subchapter A, Chapter 533, Government Code, is amended by adding Sections 533.0071 and 533.0072 to read as follows:

Sec. 533.0071. ADMINISTRATION OF CONTRACTS. The commission shall make every effort to improve the administration of contracts with managed care organizations. To improve the administration of these contracts, the commission shall:

(1) ensure that the commission has appropriate expertise and qualified staff to effectively manage contracts with managed care organizations under the Medicaid managed care program;

(2) evaluate options for Medicaid payment recovery from managed care organizations if the enrollee dies or is incarcerated or if an enrollee is enrolled in more than one state program or is covered by another liable third party insurer;

(3) maximize Medicaid payment recovery options by contracting with private vendors to assist in the recovery of capitation payments, payments from other liable third parties, and other payments made to managed care organizations with respect to enrollees who leave the managed care program;

(4) decrease the administrative burdens of managed care for the state, the managed care organizations, and the providers under managed care networks to the extent that those changes are compatible with state law and existing Medicaid managed care contracts, including decreasing those burdens by:

(A) where possible, decreasing the duplication of administrative reporting requirements for the managed care organizations, such as requirements for the submission of encounter data, quality reports, historically underutilized business reports, and claims payment summary reports;

(B) allowing managed care organizations to provide updated address information directly to the commission for correction in the state system;

(C) promoting consistency and uniformity among managed care organization policies, including policies relating to the preauthorization process, lengths of hospital stays, filing deadlines, levels of care, and case management services; and

(D) reviewing the appropriateness of primary care case management requirements in the admission and clinical criteria process, such as requirements relating to including a separate cover sheet for all communications, submitting handwritten communications instead of electronic or typed review processes, and admitting patients listed on separate notifications; and

(5) reserve the right to amend the managed care organization's process for resolving provider appeals of denials based on medical necessity to include an independent review process established by the commission for final determination of these disputes.

Sec. 533.0072. INTERNET POSTING OF SANCTIONS IMPOSED FOR CONTRACTUAL VIOLATIONS. (a) The commission shall prepare and maintain a record of each enforcement action initiated by the commission that results in a sanction, including a penalty, being imposed against a managed care organization for failure to comply with the terms of a contract to provide health care services to recipients through a managed care plan issued by the organization.

(b) The record must include:

(1) the name and address of the organization;

(2) a description of the contractual obligation the organization failed to meet;

(3) the date of determination of noncompliance;

(4) the date the sanction was imposed;

(5) the maximum sanction that may be imposed under the contract for the violation; and

(6) the actual sanction imposed against the organization.

(c) The commission shall post and maintain the records required by this section on the commission's Internet website in English and Spanish. The records must be posted in a format that is readily accessible to and understandable by a member of the public. The commission shall update the list of records on the website at least quarterly.

(d) The commission may not post information under this section that relates to a sanction while the sanction is the subject of an administrative appeal or judicial review.

(e) A record prepared under this section may not include information that is excepted from disclosure under Chapter 552.

(f) The executive commissioner shall adopt rules as necessary to implement this section.

(c) The Health and Human Services Commission shall reevaluate the case management fee used in the primary care case management program and shall make recommendations to the Legislative Budget Board if the commission finds that a different rate is appropriate.

(d) The Health and Human Services Commission shall examine:

(1) the feasibility and cost-effectiveness of establishing a sliding-scale case management fee for the primary care case management program based on primary care provider performance;

(2) the operational efficiency, health outcomes, case management, and cost-effectiveness of the primary care case management program and adopt any necessary changes to maximize health outcomes and cost-effectiveness; and

(3) the mechanism used to encourage hospital participation in the primary care case management program and adopt alternative policies if current policies are determined to be ineffective.

(e) The Health and Human Services Commission shall make every effort to improve the delivery of health care services to recipients enrolled in the Medicaid managed care program by evaluating the following actions for a determination of cost-effectiveness and pursuing those actions if they are determined to be cost-effective:

(1) adding a Medicaid managed care contract requirement that requires each managed care plan to work with the commission and health care providers to improve the immunization rate of Medicaid clients and the reporting of immunization information for inclusion in ImmTrac;

(2) to the extent permitted by federal law, allowing managed care organizations access to the previous claims history of a new enrollee that is maintained by a claims administrator if the new managed care organization enrollee was formerly a recipient under the Medicaid fee for service or primary care case management system;

(3) encouraging managed care organizations to operate nurse triage telephone lines and to more effectively notify enrollees that the lines exist and inform enrollees regarding how to access those lines;

(4) creating more rigorous contract standards for managed care organizations to ensure that children have clinically appropriate alternatives to emergency room services outside of regular office hours;

(5) developing more effective mechanisms to identify and control the utilization of program services by enrollees who are found to have abused the services; and

(6) studying the impact on the program of enrollees who have a history of high or abusive use of program services and incorporating the most effective methods of curtailing that activity while assuring that those enrollees receive adequate health services.

(f) Section 533.005, Government Code, as amended by this section, applies only to a contract between the Health and Human Services Commission and a managed care organization under Chapter 533, Government Code, that is entered into or renewed on or after the effective date of this section. A contract between the commission and an organization that is entered into or renewed before the effective date of this section is governed by the law in effect on the date the contract was entered into or renewed, and the former law is continued in effect for that purpose.

(g) Section 533.0072, Government Code, as added by this section, applies only to a sanction imposed on or after the effective date of this section.

SECTION 7. SELECTION OF MEDICAL ASSISTANCE PROVIDERS.

(a) Section 32.027, Human Resources Code, is amended by amending Subsection (f) and adding Subsection (l) to read as follows:

(f) The executive commissioner of the Health and Human Services Commission ~~[department]~~ by rule may ~~[shall]~~ develop a system of selective contracting with health care providers for the provision of nonemergency inpatient hospital services to a recipient of medical assistance under this chapter. In implementing this subsection, the executive commissioner ~~[department]~~ shall:

(1) seek input from consumer representatives and from representatives of hospitals licensed under Chapter 241, Health and Safety Code, and from organizations representing those hospitals; and

(2) ensure that providers selected under the system meet the needs of a recipient of medical assistance under this chapter.

(l) Subject to appropriations, the department shall assure that a recipient of medical assistance under this chapter may select a licensed psychologist, a licensed marriage and family therapist, as defined by Section 502.002, Occupations Code, a licensed professional counselor, as defined by Section 503.002, Occupations Code, or a licensed master social worker, as defined by Section 505.002, Occupations Code, to perform any health care service or procedure covered under the medical assistance program if the selected person is authorized by law to perform the service or procedure. This subsection shall be liberally construed.

(b) Subsection (e), Section 32.027, Human Resources Code, as amended by Chapter 1251, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 8. OPTIMIZATION OF CASE MANAGEMENT SYSTEMS.

(a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0551 to read as follows:

Sec. 32.0551. OPTIMIZATION OF CASE MANAGEMENT SYSTEMS. The Health and Human Services Commission shall:

(1) create and coordinate staffing and other administrative efficiencies for case management initiatives across the commission and health and human services agencies, as defined by Section 531.001, Government Code; and

(2) optimize federal funding revenue sources and maximize the use of state funding resources for case management initiatives across the commission and health and human services agencies.

(b) The Health and Human Services Commission shall evaluate the cost-effectiveness of developing intensive case management and targeted interventions for all Medicaid recipients who are aged, blind, or disabled.

(c) The Health and Human Services Commission shall identify Medicaid programs or protocols in existence on the effective date of this section that are not resulting in their anticipated cost savings or quality outcomes. The commission shall enhance or replace these programs or protocols with targeted strategies that have demonstrated success in improving coordination of care and cost savings within similar Medicaid recipient populations.

(d) The Health and Human Services Commission shall evaluate the cost-effectiveness of including within Medicaid disease management programs in existence on the effective date of this section additional diseases, such as chronic

kidney disease or end-stage renal disease, additional chronic medical conditions, such as severe pain that requires management, and other strategies, such as home health services for children with chronic conditions that are not included in the existing disease management programs and the use of schools and school nurses to manage chronic medical conditions of children. In evaluating the cost-effectiveness of including other diseases, conditions, and strategies, the commission may review existing data from the provider of disease management services under Section 32.059, Human Resources Code, as added by Chapter 208, Acts of the 78th Legislature, Regular Session, 2003. The commission may also research the experiences of other states, insurance companies, and managed care organizations and review other sources of data the commission determines is appropriate. The commission shall expand Medicaid disease management programs and related programs to include the diseases, conditions, and strategies that the commission determines under this subsection will be cost-effective.

(e) The Health and Human Services Commission shall conduct a study to determine the feasibility of combining the utilization management, case management, care coordination, high-cost targeting, provider incentives, and other quality and cost-control measures implemented with respect to the Medicaid program under a single federal waiver, which may be a waiver under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)) or a waiver under Section 1115(a) of that Act (42 U.S.C. Section 1315(a)). If the commission determines that the combination is feasible, the commission shall develop the combined program and seek the appropriate approval from the Centers for Medicare and Medicaid Services. In conducting the study, the commission shall solicit stakeholder input and consider information from any other optimization-related projects currently being operated, including the Consolidated Waiver Project authorized by 531.0219, Government Code, former projects including the Mental Retardation Local Authority program, and related information from projects in other states.

SECTION 9. EDUCATION CAMPAIGN. (a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.071 to read as follows:

Sec. 32.071. RECIPIENT AND PROVIDER EDUCATION. (a) The department shall develop and implement a comprehensive medical assistance education campaign for recipients and providers to ensure that care is provided in such a way as to improve patient outcomes and maximize cost-effectiveness. The department shall ensure that educational information developed under this section is demographically relevant and appropriate for each recipient or provider to whom the information is provided.

(b) The comprehensive medical assistance education campaign must include elements designed to encourage recipients to obtain, maintain, and use a medical home and to reduce their use of high-cost emergency department services for conditions that can be treated through primary care or nonemergency physicians or other providers. The campaign must include the dissemination of educational information through newsletters and emergency department staff members and at local health fairs, unless the department determines that these methods of dissemination are not effective in increasing recipients' appropriate use of the health care system.

(c) The department shall evaluate whether certain risk groups may disproportionately increase their appropriate use of the health care system as a result of targeted elements of an education campaign. If the department determines that certain risk groups will respond with more appropriate use of the system, the department shall develop and implement the appropriate targeted educational elements.

(d) The department shall develop a system for reviewing recipient prescription drug use and educating providers with respect to that drug use in a manner that emphasizes reducing inappropriate prescription drug use and the possibility of adverse drug interactions.

(e) The department shall coordinate the medical assistance education campaign with area health education centers, federally qualified health centers, as defined by 42 U.S.C. Section 1396d(1)(2)(B), and other stakeholders who use public funds to educate recipients and providers about the health care system in this state. The department shall make every effort to maximize state funds by working through these partners to maximize receipt of additional federal funding for administrative and other costs.

(f) The department shall coordinate with other state and local agencies to ensure that community-based health workers, health educators, state eligibility determination employees who work in hospitals and other provider locations, and promoters are used in the medical assistance education campaign, as appropriate.

(g) The department shall ensure that all state agencies that work with recipients, all administrative persons who provide eligibility determination and enrollment services, and all service providers use the same curriculum for recipient and provider education, as appropriate.

(b) In developing the comprehensive medical assistance education campaign under Section 32.071, Human Resources Code, as added by this section, the Health and Human Services Commission shall ensure that private entities participating in the Medicaid program, including vendors providing claims administration, eligibility determination, enrollment services, and managed care services, are involved to the extent those entities' participation is useful.

(c) The Health and Human Services Commission shall identify all funds being spent on the effective date of this section on education for Medicaid recipients. The commission shall integrate these funds into the comprehensive medical assistance education campaign under Section 32.071, Human Resources Code, as added by this section.

SECTION 10. OFFICE OF MEDICAL TECHNOLOGY. Subchapter A, Chapter 531, Government Code, is amended by adding Section 531.0081 to read as follows:

Sec. 531.0081. OFFICE OF MEDICAL TECHNOLOGY. (a) In this section, "office" means the office of medical technology.

(b) The commission shall establish the office of medical technology within the commission. The office shall explore and evaluate new developments in medical technology and propose implementing the technology in the medical assistance program under Chapter 32, Human Resources Code, if appropriate and cost-effective.

(c) Office staff must have skills and experience in research regarding health care technology.

SECTION 11. MEDICAID REIMBURSEMENT RATES. (a) Section 531.021, Government Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) In adopting rates for medical assistance payments under Subsection (b)(2), the executive commissioner may adopt reimbursement rates for appropriate nursing services provided to recipients with certain health conditions if those services are determined to provide a cost-effective alternative to hospitalization. A physician must certify that the nursing services are medically appropriate for the recipient for those services to qualify for reimbursement under this subsection.

(g) In adopting rates for medical assistance payments under Subsection (b)(2), the executive commissioner may adopt cost-effective reimbursement rates for group appointments with medical assistance providers for certain diseases and medical conditions specified by rules of the executive commissioner.

(b) Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.02175 to read as follows:

Sec. 531.02175. REIMBURSEMENT FOR ONLINE MEDICAL CONSULTATIONS. (a) In this section, "physician" means a person licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code.

(b) Subject to the requirements of this subsection, the executive commissioner by rule may require the commission and each health and human services agency that administers a part of the Medicaid program to provide Medicaid reimbursement for a medical consultation that is provided by a physician or other health care professional using the Internet as a cost-effective alternative to an in-person consultation. The executive commissioner may require the commission or a health and human services agency to provide the reimbursement described by this subsection only if the Centers for Medicare and Medicaid Services develop an appropriate Current Procedural Terminology code for medical services provided using the Internet.

(c) The executive commissioner may develop and implement a pilot program in one or more sites chosen by the executive commissioner under which Medicaid reimbursements are paid for medical consultations provided by physicians or other health care professionals using the Internet. The pilot program must be designed to test whether an Internet medical consultation is a cost-effective alternative to an in-person consultation under the Medicaid program. The executive commissioner may modify the pilot program as necessary throughout its implementation to maximize the potential cost-effectiveness of Internet medical consultations. If the executive commissioner determines from the pilot program that Internet medical consultations are cost-effective, the executive commissioner may expand the pilot program to additional sites or may implement Medicaid reimbursements for Internet medical consultations statewide.

(d) The executive commissioner is not required to implement the pilot program authorized under Subsection (c) as a prerequisite to providing Medicaid reimbursement authorized by Subsection (b) on a statewide basis.

SECTION 12. HOSPITAL EMERGENCY ROOM USE REDUCTION.

(a) Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.085 to read as follows:

Sec. 531.085. HOSPITAL EMERGENCY ROOM USE REDUCTION INITIATIVES. The commission shall develop and implement a comprehensive plan to reduce the use of hospital emergency room services by recipients under the medical assistance program. The plan may include:

(1) a pilot program designed to facilitate program participants in accessing an appropriate level of health care, which may include as components:

(A) providing program participants access to bilingual health services providers; and

(B) giving program participants information on how to access primary care physicians, advanced practice nurses, and local health clinics;

(2) a pilot program under which health care providers, other than hospitals, are given financial incentives for treating recipients outside of normal business hours to divert those recipients from hospital emergency rooms;

(3) payment of a nominal referral fee to hospital emergency rooms that perform an initial medical evaluation of a recipient and subsequently refer the recipient, if medically stable, to an appropriate level of health care, such as care provided by a primary care physician, advanced practice nurse, or local clinic;

(4) a program under which the commission or a managed care organization that enters into a contract with the commission under Chapter 533 contacts, by telephone or mail, a recipient who accesses a hospital emergency room three times during a six-month period and provides the recipient with information on ways the recipient may secure a medical home to avoid unnecessary treatment at hospital emergency rooms;

(5) a health care literacy program under which the commission develops partnerships with other state agencies and private entities to:

(A) assist the commission in developing materials that:

(i) contain basic health care information for parents of young children who are recipients under the medical assistance program and who are participating in public or private child-care or prekindergarten programs, including federal Head Start programs; and

(ii) are written in a language understandable to those parents and specifically tailored to be applicable to the needs of those parents;

(B) distribute the materials developed under Paragraph (A) to those parents; and

(C) otherwise teach those parents about the health care needs of their children and ways to address those needs; and

(6) other initiatives developed and implemented in other states that have shown success in reducing the incidence of unnecessary treatment in hospital emergency rooms.

(b) The Health and Human Services Commission may develop the health care literacy component of the comprehensive plan to reduce the use of hospital emergency room services required by Subdivision (5), Section 531.085, Government Code, as added by this section, so that the health care literacy component operates in a manner

similar to the manner in which the Johnson & Johnson/UCLA Health Care Institute operates its health care training program that is designed to teach parents to better address the health care needs of their children.

SECTION 13. PERFORMANCE BONUS PILOT PROGRAM. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.086 to read as follows:

Sec. 531.086. PERFORMANCE BONUS PILOT PROGRAM. (a) The commission shall develop a proposal for providing higher reimbursement rates to primary care case management providers under the Medicaid program who treat program recipients with chronic health conditions in accordance with evidence-based, nationally accepted best practices and standards of care.

(b) The commission shall define the parameters of the proposed program, including:

- (1) the types of chronic health conditions the program would target;
- (2) the best practices and standards of care that must be followed for a provider to obtain a higher reimbursement rate under the proposed program; and
- (3) the types of providers to whom the higher reimbursement rate would be offered under the proposed program.

(c) Not later than December 1, 2006, the Health and Human Services Commission shall report to the standing committees of the senate and the house of representatives having primary jurisdiction over welfare programs regarding the proposed program under this section. The report must include:

- (1) the anticipated effect of the higher reimbursement rates to be offered under the program on the quality of care provided and the health outcomes for program recipients;
- (2) a determination of whether the program would be cost-effective; and
- (3) a recommendation regarding implementation of the program.

(d) This section expires September 1, 2007.

SECTION 14. RETURN OF UNUSED DRUGS. Section 562.1085, Occupations Code, is amended by amending Subsection (a) and adding Subsection (f) to read as follows:

(a) A pharmacist who practices in or serves as a consultant for a health care facility in this state may return to a pharmacy certain unused drugs, other than a controlled substance as defined by Chapter 481, Health and Safety Code, purchased from the pharmacy as provided by board rule. The unused drugs must:

- (1) be approved by the federal Food and Drug Administration and be:
 - (A) sealed in ~~[the manufacturer's original]~~ unopened tamper-evident packaging and either individually packaged or packaged in unit-dose packaging;
 - (B) oral or parenteral medication in sealed single-dose containers approved by the federal Food and Drug Administration;
 - (C) topical or inhalant drugs in sealed units-of-use containers approved by the federal Food and Drug Administration; or
 - (D) parenteral medications in sealed multiple-dose containers approved by the federal Food and Drug Administration from which doses have not been withdrawn; and

(2) not be the subject of a mandatory recall by a state or federal agency or a voluntary recall by a drug seller or manufacturer.

(f) The tamper-evident packaging required under Subsection (a)(1) for the return of unused drugs is not required to be the manufacturer's original packaging unless that packaging is required by federal law.

SECTION 15. MEDICAL INFORMATION TELEPHONE HOTLINE.

(a) Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.02131 to read as follows:

Sec. 531.02131. MEDICAID MEDICAL INFORMATION TELEPHONE HOTLINE PILOT PROGRAM. (a) In this section, "net cost-savings" means the total projected cost of Medicaid benefits for an area served under the pilot program minus the actual cost of Medicaid benefits for the area.

(b) The commission shall evaluate the cost-effectiveness, in regard to preventing unnecessary emergency room visits and ensuring that Medicaid recipients seek medical treatment in the most medically appropriate and cost-effective setting, of developing a Medicaid medical information telephone hotline pilot program under which physicians are available by telephone to answer medical questions and provide medical information for recipients. If the commission determines that the pilot program is likely to result in net cost-savings, the commission shall develop the pilot program.

(c) The commission shall select the area in which to implement the pilot program. The selected area must include:

(1) at least two counties; and

(2) not more than 100,000 Medicaid recipients, with approximately 50 percent of the recipients enrolled in a managed care program in which the recipients receive services from a health maintenance organization.

(d) The commission shall request proposals from private vendors for the operation of a telephone hotline under the pilot program. The commission may not award a contract to a vendor unless the vendor agrees to contractual terms:

(1) requiring the vendor to answer medical questions and provide medical information by telephone to recipients using only physicians;

(2) providing that the value of the contract is contingent on achievement of net cost-savings in the area served by the vendor; and

(3) permitting the commission to terminate the contract after a reasonable period if the vendor's services do not result in net cost-savings in the area served by the vendor.

(e) The commission shall periodically determine whether the pilot program is resulting in net cost-savings. The commission shall discontinue the pilot program if the commission determines that the pilot program is not resulting in net cost-savings after a reasonable period.

(f) Notwithstanding any other provision of this section, including Subsection (b), the commission is not required to develop the pilot program if suitable private vendors are not available to operate the telephone hotline.

(g) The executive commissioner shall adopt rules necessary for implementation of this section.

(b) Not later than December 1, 2005, the Health and Human Services Commission shall determine whether the pilot program described by Section 531.02131, Government Code, as added by this section, is likely to result in net cost-savings. If the determination indicates that net cost-savings are likely, the commission shall take the action required by Subsections (c), (d), and (e) of this section.

(c) Not later than January 1, 2006, the Health and Human Services Commission shall select the counties in which the pilot program will be implemented.

(d) Not later than February 1, 2006, the Health and Human Services Commission shall request proposals from private vendors for the operation of a medical information telephone hotline. The commission shall evaluate the proposals and choose one or more vendors as soon as possible after the receipt of the proposals.

(e) Not later than January 1, 2007, the Health and Human Services Commission shall report to the governor, the lieutenant governor, and the speaker of the house of representatives regarding the pilot program. The report must include:

(1) a description of the status of the pilot program, including whether the commission was unable to contract with a suitable vendor;

(2) if the pilot program has been implemented:

(A) an evaluation of the effects of the pilot program on emergency room visits by program participants; and

(B) a description of cost savings in the area included in the pilot program; and

(3) recommendations regarding expanding or revising the pilot program.

SECTION 16. PRESCRIPTION DRUGS. (a) Section 531.070, Government Code, is amended by amending Subsection (l) and adding Subsection (n) to read as follows:

(l) Each year the commission shall provide a written report to the legislature and the governor. The report shall cover:

(1) the cost of administering the preferred drug lists adopted under Section 531.072;

(2) an analysis of the utilization trends for medical services provided by the state and any correlation to the preferred drug lists;

(3) an analysis of the effect on health outcomes and results for recipients; ~~[and]~~

(4) statistical information related to the number of approvals granted or denied; and

(5) an analysis of the effect during the preceding year of the implementation of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. No. 108-173) on the preferred drug list adopted under Section 531.072 and the prior authorization requirements under Section 531.073 applicable under the Medicaid vendor drug program.

(n) Prior to or during supplemental rebate agreement negotiations for drugs being considered for the preferred drug list, the commission shall disclose to pharmaceutical manufacturers any clinical edits or clinical protocols that may be

imposed on drugs within a particular drug category that are placed on the preferred list during the contract period. Clinical edits will not be imposed for a preferred drug during the contract period unless the above disclosure is made.

(b) Subsection (n), Section 531.070, Government Code, as added by this section, applies only to a supplemental rebate agreement that is entered into or renewed on or after the effective date of this Act. A supplemental rebate agreement that is entered into or renewed before the effective date of this Act is governed by the law in effect on the date the agreement was entered into or renewed, and the former law is continued in effect for that purpose.

SECTION 17. PHARMACEUTICAL AND THERAPEUTICS COMMITTEE. Section 531.074, Government Code, is amended by adding Subsection (m) to read as follows:

(m) The commission or the commission's agent shall publicly disclose each specific drug recommended for preferred drug list status for each drug class included in the preferred drug list for the Medicaid vendor drug program. The disclosure must be made in writing after the conclusion of committee deliberations that result in recommendations made to the executive commissioner regarding the placement of drugs on the preferred drug list.

SECTION 18. FRAUD, ABUSE, OR OVERCHARGES. (a) Section 531.102, Government Code, is amended by adding Subsections (j) and (k) to read as follows:

(j) The office shall prepare a final report on each audit or investigation conducted under this section. The final report must include:

(1) a summary of the activities performed by the office in conducting the audit or investigation;

(2) a statement regarding whether the audit or investigation resulted in a finding of any wrongdoing; and

(3) a description of any findings of wrongdoing.

(k) A final report on an audit or investigation is subject to required disclosure under Chapter 552. All information and materials compiled during the audit or investigation remain confidential and not subject to required disclosure in accordance with Section 531.1021(g).

(b) Section 531.1021, Government Code, is amended by amending Subsection (g) and adding Subsection (h) to read as follows:

(g) All information and materials subpoenaed or compiled by the office in connection with an audit or investigation are confidential and not subject to disclosure under Chapter 552, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the office or its employees or agents involved in the audit or investigation conducted by the office, except that this information may be disclosed to the office of the attorney general, the state auditor's office, and law enforcement agencies.

(h) A person who receives information under Subsection (g) may disclose the information only in accordance with Subsection (g) and in a manner that is consistent with the authorized purpose for which the person first received the information.

SECTION 19. MEDICAID DISEASE MANAGEMENT PROGRAMS. (a) Section 533.009, Government Code, is amended by adding Subsection (f) to read as follows:

(f) The executive commissioner, by rule, shall prescribe the minimum requirements that a managed care organization, in providing a disease management program, must meet to be eligible to receive a contract under this section. The managed care organization must, at a minimum, be required to:

(1) provide disease management services that have performance measures for particular diseases that are comparable to the relevant performance measures applicable to a provider of disease management services under Section 32.059, Human Resources Code, as added by Chapter 208, Acts of the 78th Legislature, Regular Session, 2003; and

(2) show evidence of ability to manage complex diseases in the Medicaid population.

(b) Section 32.059, Human Resources Code, as added by Chapter 208, Acts of the 78th Legislature, Regular Session, 2003, is amended by amending Subsection (c) and adding Subsection (c-1) to read as follows:

(c) The executive commissioner of the Health and Human Services Commission ~~[department]~~, by rule, shall prescribe the minimum requirements a provider of a disease management program must meet to be eligible to receive a contract under this section. The provider must, at a minimum, be required to:

(1) use disease management approaches that are based on evidence-supported models, ~~[minimum]~~ standards of care in the medical community, and clinical outcomes; and

(2) ensure that a recipient's primary care physician and other appropriate specialty physicians, or registered nurses, advanced practice nurses, or physician assistants specified and directed or supervised in accordance with applicable law by the recipient's primary care physician or other appropriate specialty physicians, become directly involved in the disease management program through which the recipient receives services.

(c-1) A managed care health plan that develops and implements a disease management program under Section 533.009, Government Code, and a provider of a disease management program under this section shall coordinate during a transition period beneficiary care for patients that move from one disease management program to another program.

(c) The executive commissioner of the Health and Human Services Commission may use a provider of a disease management program under Section 32.059, Human Resources Code, as added by Chapter 208, Acts of the 78th Legislature, Regular Session, 2003, as amended by this section, to provide disease management services if the executive commissioner determines that the use of that provider will be more cost-effective to the Medicaid program than using a provider of a disease management program under Section 533.009, Government Code, as amended by this section. A Medicaid recipient currently in a disease management program provided under Section 32.059, Human Resources Code, as added by Chapter 208, Acts of the 78th Legislature, Regular Session, 2003, in a service area that is subject to a Medicaid managed care expansion may remain enrolled in the recipient's current disease management program if the executive commissioner determines that allowing those recipients to remain is cost-effective.

SECTION 20. INTEGRATED CARE MANAGEMENT MODEL. (a) Chapter 533, Government Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. INTEGRATED CARE MANAGEMENT MODEL

Sec. 533.061. INTEGRATED CARE MANAGEMENT MODEL. (a) The executive commissioner, by rule, shall develop an integrated care management model of Medicaid managed care. The "integrated care management model" is a noncapitated primary care case management model of Medicaid managed care with enhanced components to:

- (1) improve patient health and social outcomes;
- (2) improve access to care;
- (3) constrain health care costs; and
- (4) integrate the spectrum of acute care and long-term care services and

supports.

(b) In developing the integrated care management model, the executive commissioner shall ensure that the integrated care management model utilizes managed care principles and strategies to assure proper utilization of acute care and long-term care services and supports. The components of the model must include:

- (1) the assignment of recipients to a medical home;
- (2) utilization management to assure appropriate access and utilization of services, including prescription drugs;
- (3) health risk or functional needs assessment;
- (4) a method for reporting to medical homes and other appropriate health care providers on the utilization by recipients of health care services and the associated cost of utilization of those services;
- (5) mechanisms to reduce inappropriate emergency department utilization by recipients, including the provision of after-hours primary care;
- (6) mechanisms that ensure a robust system of care coordination for assessing, planning, coordinating, and monitoring recipients with complex, chronic, or high-cost health care or social support needs, including attendant care and other services needed to remain in the community;
- (7) implementation of a comprehensive, community-based initiative to educate recipients about effective use of the health care delivery system;
- (8) strategies to prevent or delay institutionalization of recipients through the effective utilization of home and community-based support services; and
- (9) any other components the executive commissioner determines will improve a recipient's health outcome and are cost-effective.

(c) For purposes of this chapter, the integrated care management model is a managed care plan.

Sec. 533.062. CONTRACTING FOR INTEGRATED CARE MANAGEMENT.

(a) The commission may contract with one or more administrative services organizations to perform the coordination of care and other services and functions of the integrated care management model developed under Section 533.061.

(b) The commission may require that each administrative services organization contracting with the commission under this section assume responsibility for exceeding administrative costs and not meeting performance standards in connection with the provision of acute care and long-term care services and supports under the terms of the contract.

(c) The commission may include in a contract awarded under this section a written guarantee of state savings on Medicaid expenditures for recipients receiving services provided under the integrated care management model developed under Section 533.061.

(d) The commission may require that each administrative services organization contracting with the commission under this section establish pay-for-performance incentives for providers to improve patient outcomes.

(e) In this section, "administrative services organization" means an entity that performs administrative and management functions, such as the development of a physician and provider network, care coordination, service coordination, utilization review and management, quality management, and patient and provider education, for a noncapitated system of health care services, medical services, or long-term care services and supports.

Sec. 533.063. STATEWIDE INTEGRATED CARE MANAGEMENT ADVISORY COMMITTEE. (a) The executive commissioner may appoint an advisory committee to assist the executive commissioner in the development and implementation of the integrated care management model.

(b) The advisory committee is subject to Chapter 551.

(b) The Health and Human Services Commission shall require each administrative services organization contracting with the commission to perform services under Section 533.062, Government Code, as added by this section, to coordinate with, use, and otherwise interface with the fee-for-service claims payment contractor operating in this state on August 31, 2005, until the date the claims payment contract expires, subject to renewal of the contract.

(c) The commission may require each administrative services organization contracting with the commission to perform services under Section 533.062, Government Code, as added by this section, to incorporate disease management into the integrated care management model established under Section 533.061, Government Code, as added by this section, utilizing the Medicaid disease management contractor operating in this state on November 1, 2004, until the date the disease management contract expires, subject to renewal of the contract.

(d) If any provision of this section conflicts with another statute enacted by the 79th Legislature, Regular Session, 2005, the provision of this section controls.

SECTION 21. DISPENSATION OF PRESCRIPTION DRUGS.

(a) Subsections (o) and (p), Section 481.074, Health and Safety Code, are amended to read as follows:

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

(1) the prescription is written for:

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

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

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

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

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

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

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

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

SECTION 22. PROVISION OF CERTAIN PRESCRIPTION DRUGS PROHIBITED. Section 32.024, Human Resources Code, is amended by adding Subsection (bb) to read as follows:

(bb) The department may not provide an erectile dysfunction medication under the Medicaid vendor drug program to a person required to register as a sex offender under Chapter 62, Code of Criminal Procedure, to the maximum extent federal law allows the department to deny that medication.

SECTION 23. CONTINUOUS ELIGIBILITY. Section 32.0261, Human Resources Code, is amended to read as follows:

Sec. 32.0261. CONTINUOUS ELIGIBILITY. The department shall adopt rules in accordance with 42 U.S.C. Section 1396a(e)(12), as amended, to provide for a period of continuous eligibility for a child under 19 years of age who is determined to be eligible for medical assistance under this chapter. The rules shall provide that the

child remains eligible for medical assistance, without additional review by the department and regardless of changes in the child's resources or income, until the earlier of:

(1) the end of the six-month period following ~~[first anniversary of]~~ the date on which the child's eligibility was determined; or

(2) the child's 19th birthday.

SECTION 24. NOTICE OF AVAILABILITY OF CERTAIN BENEFITS. Chapter 159, Occupations Code, is amended by adding Section 159.010 to read as follows:

Sec. 159.010. NOTICE OF BENEFITS UNDER STATE CHILD HEALTH PLAN. A physician who provides Medicaid health care services to a pregnant woman shall inform the woman of the health benefits for which the woman or the woman's child may be eligible under the state child health plan under Chapter 62, Health and Safety Code.

SECTION 25. MEDICAID COVERAGE FOR HEALTH INSURANCE PREMIUMS AND LONG-TERM CARE NEEDS. (a) The Health and Human Services Commission shall explore the commission's authority under federal law to offer, and the cost and feasibility of offering:

(1) a stipend paid by the Medicaid program to a person to cover the cost of a private health insurance plan as an alternative to providing traditional Medicaid services for the person;

(2) premium payment assistance through the Medicaid program for long-term care insurance for a person with a health condition that increases the likelihood that the person will need long-term care in the future; and

(3) a long-term care partnership between the Medicaid program and a person under which the person pays the premiums for long-term care insurance and the Medicaid program provides continued coverage after benefits under that insurance are exhausted.

(b) In exploring the feasibility of the options described by Subsection (a) of this section, the Health and Human Services Commission shall consider whether other state incentives that could encourage persons to purchase health insurance plans or long-term care insurance are feasible. The incentives may include offering tax credits to businesses to increase the availability of affordable insurance.

(c) If the Health and Human Services Commission determines that any of the options described by Subsection (a) of this section are feasible and cost-effective, the commission shall make efforts to implement those options to the extent they are authorized by federal law. The commission shall request any necessary waivers from the Centers for Medicare and Medicaid Services as soon as possible after determining that an option is feasible and cost-effective. If the commission determines that legislative changes are necessary to implement an option, the commission shall report to the 80th Legislature and specify the changes that are needed.

SECTION 26. MAXIMIZATION OF FEDERAL RESOURCES. The Health and Human Services Commission shall make every effort to maximize the receipt and use of federal health and human services resources for the office of community

collaboration established under Section 531.020, Government Code, as added by this Act, and the decision support system in the commission's center for strategic decision support.

SECTION 27. ABOLITION OF LONG-TERM CARE LEGISLATIVE OVERSIGHT COMMITTEE; INTERIM REPORT ON LONG-TERM CARE.

(a) On the effective date of this Act, Subchapter O, Chapter 242, Health and Safety Code, is repealed, and the long-term care legislative oversight committee established under that subchapter is abolished.

(b) All records in the custody of the long-term care legislative oversight committee that are related to a duty, function, or activity of the committee shall be transferred on the effective date of this Act to the standing committees of the senate and house of representatives having primary jurisdiction over long-term care services.

SECTION 28. ABOLITION OF HEALTH AND HUMAN SERVICES TRANSITION LEGISLATIVE OVERSIGHT COMMITTEE. The Health and Human Services Transition Legislative Oversight Committee established under Section 1.22, Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, is abolished on the effective date of this Act.

SECTION 29. ABOLITION OF INTERAGENCY COUNCIL ON PHARMACEUTICALS BULK PURCHASING. On September 1, 2007, the Interagency Council on Pharmaceuticals Bulk Purchasing is abolished, and Chapter 111, Health and Safety Code, and Subsection (e), Section 431.116, and Subsection (d), Section 431.208, Health and Safety Code, are repealed.

SECTION 30. IMPLEMENTATION; WAIVER. (a) The Health and Human Services Commission shall make every effort to take each action and implement each reform required by this Act as soon as possible. Except as otherwise provided by this Act, the commission shall take each action and implement each reform required by this Act not later than September 1, 2007. Any action of the commission taken to justify implementing or ignoring the reforms required by this Act must be defensible, but need not be exhaustive.

(b) Not later than December 1, 2005, the Health and Human Services Commission shall submit a report to the governor and to the presiding officers of the standing committees of the senate and house of representatives having primary jurisdiction over health and human services that specifies the strategies the commission or an appropriate health and human services agency, as defined by Section 531.001, Government Code, will use to examine, study, evaluate, or otherwise make a determination relating to a reform or take another action required by this Act.

(c) Except as provided by Subsection (b) of this section, for each provision of this Act that requires the Health and Human Services Commission or a health and human services agency, as defined by Section 531.001, Government Code, to examine the possibility of making changes to the Medicaid program, to study an aspect of the Medicaid program, to evaluate the cost-effectiveness of a proposed reform, or to otherwise make a determination before implementing a reform, the Health and Human Services Commission shall submit a report to the governor and to the presiding officers of the standing committees of the senate and house of representatives having primary jurisdiction over health and human services that

includes the criteria used and the results obtained by the commission or health and human services agency in taking the required action. The report must be delivered not later than September 1, 2007.

(d) If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 31. EFFECTIVE DATE. Except as otherwise provided by this Act, this Act takes effect September 1, 2005.

The Conference Committee Report on **SB 1188** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 988

Senator Carona submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 988** 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
LUCIO
BRIMER
ESTES
FRASER

On the part of the Senate

FLYNN
T. KING
MADDEN
MCCALL
RIDDLE

On the part of the House

A BILL TO BE ENTITLED AN ACT

relating to education courses required for a mortgage broker or loan officer license.

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

SECTION 1. Section 156.204, Finance Code, is amended by reenacting and amending Subsection (c), as amended by Chapters 170 and 171, Acts of the 78th Legislature, Regular Session, 2003, and adding Subsection (e) to read as follows:

(c) To be eligible to be licensed as a loan officer a person must:

- (1) be an individual who is at least 18 years of age;
- (2) be a citizen of the United States or a lawfully admitted alien;
- (3) designate in the application the name of the mortgage broker sponsoring

the loan officer;

(4) provide the commissioner with satisfactory evidence that the applicant satisfies one of the following:

(A) the person meets one of the requirements described by Subsection (a)(4);

(B) the person has successfully completed 30 ~~[45]~~ hours of education courses approved by the commissioner under this section;

(C) the person has 18 months of experience as a loan officer as evidenced by documentary proof of full-time employment as a loan officer with a mortgage broker or a person exempt under Section 156.202; or

(D) for applications received prior to January 1, 2000, the mortgage broker that will sponsor the applicant provides a certification under oath that the applicant has been provided necessary and appropriate education and training regarding all applicable state and federal law and regulations relating to mortgage loans;

(5) not have been convicted of a criminal offense that the commissioner determines directly relates to the occupation of a loan officer as provided by Chapter 53, Occupations Code;

(6) satisfy the commissioner as to the individual's good moral character, including the individual's honesty, trustworthiness, and integrity; ~~and~~

(7) ~~[(6)]~~ provide the commissioner with satisfactory evidence of having passed an examination, offered by a testing service or company approved by the finance commission, that demonstrates knowledge of:

(A) the mortgage industry; and

(B) the role and responsibilities of a loan officer; and

(8) ~~[(7)]~~ not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued to the individual by the commissioner.

(e) The education courses required for a loan officer license under Subsection (c)(4)(B) must cover ethics, the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. Section 2601 et seq.), the Truth in Lending Act (15 U.S.C. Section 1601 et seq.), the Equal Credit Opportunity Act (15 U.S.C. Section 1691 et seq.), and the provisions of this chapter.

SECTION 2. Section 156.208, Finance Code, is amended by amending Subsection (g) and adding Subsection (i) to read as follows:

(g) The finance commission shall adopt rules related to the approval of courses for continuing education credit under this section that provide for the acceptance of continuing education courses that are related to finance, financial consulting, lending, real estate contracts, discrimination laws, deceptive trade practices, real property conveyances, and other topics that are relevant to mortgage brokers and that are acceptable as continuing education courses to other professional licensing agencies or related trade associations. The finance commission may approve any education course approved by the Texas Real Estate Commission, the Mortgage Bankers Association of America, or the National Association of Mortgage Brokers.

(i) The finance commission shall adopt a rule that requires a mortgage broker or loan officer to attend, during the term of the current license, not less than eight hours of continuing education courses related to residential mortgage lending before renewing a license under this section.

SECTION 3. (a) The changes in law made by this Act to Section 156.204, Finance Code, apply only to an individual who applies for a license as a loan officer on or after September 1, 2005. An individual who applies for a license before September 1, 2005, must comply with the requirements in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

(b) The changes in law made by this Act to Section 156.208, Finance Code, apply only to an individual who applies to renew the individual's license on or after September 1, 2005. An individual who applies to renew a license before September 1, 2005, must comply with the requirements in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2005.

The Conference Committee Report on **SB 988** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1176

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas

May 28, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 1176** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ARMBRISTER

DUNCAN

BARRIENTOS

BRIMER

JACKSON

On the part of the Senate

EILAND

STRAUS

FLYNN

BAXTER

KOLKHORST

On the part of the House

A BILL TO BE ENTITLED AN ACT

relating to systems and programs administered by the Employees Retirement System of Texas.

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

SECTION 1. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.1402 to read as follows:

Sec. 411.1402. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: EMPLOYEES RETIREMENT SYSTEM OF TEXAS. (a) The Employees Retirement System of Texas is entitled to obtain from the department

criminal history record information maintained by the department that relates to a person who is an applicant for employment with, or who is or has been employed by, the retirement system.

(b) Criminal history record information obtained by the Employees Retirement System of Texas under Subsection (a) may be used only to evaluate an applicant for employment with, or a current or former employee of, the retirement system.

(c) The Employees Retirement System of Texas may not release or disclose information obtained under Subsection (a) except on court order.

(d) After the expiration of any probationary term of the person's employment or not later than the 180th day after the date of receipt of the information, whichever is later, the Employees Retirement System of Texas shall destroy all criminal history record information obtained under Subsection (a).

SECTION 2. Subdivision (2-a), Section 609.001, Government Code, is amended to read as follows:

(2-a) "Institution of higher education" means an institution of higher education as defined by Section 61.003, Education Code~~[, other than a public junior college]~~.

SECTION 3. Section 811.001, Government Code, is amended by adding Subdivision (8-a) to read as follows:

(8-a) "Good cause" means that a person's failure to act was not because of a lack of due diligence the exercise of which would have caused a reasonable person to take prompt and timely action. A failure to act based on ignorance of the law or facts reasonably discoverable through the exercise of due diligence does not constitute good cause.

SECTION 4. Section 812.003, Government Code, is amended to read as follows:

Sec. 812.003. MEMBERSHIP IN EMPLOYEE CLASS. (a) Except as provided by Subsections ~~[Subsection]~~ (b) and (d), membership in the employee class of the retirement system includes all employees and appointed officers of every department, commission, board, agency, or institution of the state except:

(1) independent contractors and their employees performing work for the state; and

(2) persons disqualified from membership under Section 812.201.

(b) An office or employment that is included in the coverage of the Teacher Retirement System of Texas, the Judicial Retirement System of Texas Plan One, or the Judicial Retirement System of Texas Plan Two is not a position with a department, commission, board, agency, or institution of the state for purposes of this subtitle.

(c) Membership in the employee class is mandatory for eligible persons.

(d) Membership ~~[For persons whose employment or office holding begins on or after September 1, 2005, membership in the employee class begins on the first day the person is employed or holds office.]~~

~~[(e) For persons whose employment or office holding begins before September 1, 2005, membership]~~ in the employee class begins on the 91st day after the first day a person is employed or holds office.

~~(e)~~ ~~[(f)]~~ A person who is reemployed or who again holds office after withdrawing contributions under Subchapter B for previous service credited in the employee class begins membership in the employee class on the 91st day after the first day the person is reemployed or again holds office.

~~(f)~~ A ~~[(g)]~~ ~~Notwithstanding any other provision of law, a~~ member may establish service credit only as provided by Section 813.514 for service performed during the 90-day waiting period provided by Subsection ~~(d)~~ or ~~(e)~~ ~~[(or (f))]~~.

~~[(h) Subsections (e), (f), and (g) and this subsection expire September 1, 2005.]~~

SECTION 5. Subsection (a), Section 812.005, Government Code, is amended to read as follows:

(a) A person's membership in the retirement system is terminated by:

(1) death of the person;

(2) retirement based on service credited in all classes of membership in which the person has service credit; or

(3) withdrawal of all of the person's accumulated contributions~~[-or~~

~~[(4) transfer of the person's accumulated contributions under Section 815.502(e)].~~

SECTION 6. Subchapter A, Chapter 812, Government Code, is amended by adding Section 812.006 to read as follows:

Sec. 812.006. OPTIONAL MEMBERSHIP. (a) In this section, "qualified employee" means a person who:

(1) has at least three years of service credit in the retirement system in the legislative branch that was accrued before June 18, 1993;

(2) was employed by an institution of higher education, as defined by Section 61.003, Education Code, before December 31, 1998, and elected to participate in the optional retirement program under Chapter 830; and

(3) is actively participating in the optional retirement program.

(b) A qualified employee may make a one-time, irrevocable election in a manner provided by the retirement system to renew active participation in the system and cease participation in the optional retirement program.

(c) An employee who makes an election under this section is not eligible to establish service credit in the retirement system for service performed while participating in the optional retirement program.

(d) This section is contingent upon the receipt of a favorable Internal Revenue Service ruling addressing all tax issues.

(e) An election authorized by this section must be made within 90 days of the Internal Revenue Service ruling.

SECTION 7. Subsection (b), Section 813.102, Government Code, is amended to read as follows:

(b) A member may reestablish credit by depositing with the retirement system in a lump sum the amount withdrawn from a membership class, plus interest computed on the basis of the state fiscal year at an annual rate of 10 ~~[five]~~ percent from the date of withdrawal to the date of redeposit.

SECTION 8. Section 813.504, Government Code, is amended to read as follows:

Sec. 813.504. ELIGIBILITY FOR SERVICE CREDIT PREVIOUSLY CANCELED. ~~[(a)]~~ A person may reestablish service credit previously canceled in the retirement system if~~;~~

~~[(1)]~~ the person is a member of the employee class and at least six months have elapsed since the end of the month in which the cancellation became effective~~;~~
~~or~~

~~[(2)] the person is:~~

~~[(A)] a former member of the employee class; and~~

~~[(B)] a participant in the optional retirement program under Chapter 830].~~

SECTION 9. Subsection (a), Section 813.513, Government Code, is amended to read as follows:

(a) An eligible member may establish not more than 36 ~~[60]~~ months of equivalent membership service credit, including law enforcement or custodial officer service, in either the elected class or the employee class.

SECTION 10. Subsection (c), Section 813.514, Government Code, is amended to read as follows:

(c) After a member makes the deposits required by this section, the retirement system shall grant the member one month of equivalent membership service credit for each month of credit approved. ~~[A member may establish not more than three months of equivalent membership service credit under this section.]~~

SECTION 11. Subchapter A, Chapter 814, Government Code, is amended by adding Section 814.011 to read as follows:

Sec. 814.011. LUMP-SUM PAYMENTS IN LIEU OF ANNUITIES. The retirement system may elect to make a lump-sum payment to a retiree or beneficiary in lieu of annuity payments if the actuarial present value of the annuity at the time of retirement or death does not exceed \$20,000. Payment of a lump sum under this section does not affect eligibility for any other program administered by the retirement system.

SECTION 12. Section 814.202, Government Code, is amended by amending Subsections (a), (b), and (e) and adding Subsection (f) to read as follows:

(a) A member who was contributing to the retirement system at the time the member became permanently disabled for the further performance of duty is eligible to retire for a nonoccupational disability if the member has at least:

- (1) 8 years of membership service credit in the elected class of membership;
- (2) 6 years of membership service credit in the elected class plus 2 years of military service credit established before January 1, 1978; or
- (3) 10 years of membership service credit in the employee class of membership.

(b) A member who was contributing to the retirement system at the time the member became permanently incapacitated for the further performance of duty, who meets the requirements provided by Section 811.001(12), and who has service credit in either membership class is eligible to retire for an occupational disability regardless of age or amount of service credit.

(e) A member otherwise eligible may not apply for or receive a nonoccupational disability annuity if the member is eligible for a service retirement annuity under Section 814.102 or 814.104(a)(2) or (b) [814.104].

(f) An application for a nonoccupational disability retirement may not be made after the second anniversary of the date the member ceased making contributions to the retirement system.

SECTION 13. Section 814.203, Government Code, is amended to read as follows:

Sec. 814.203. CERTIFICATION OF DISABILITY. As soon as practicable after an application for disability retirement is filed, the medical board shall evaluate the medical and other pertinent information regarding the member's application. If the medical board finds that the member is mentally or physically incapacitated for the further performance of duty, as supported by substantial, objective, medical evidence, and that the incapacity is likely to be permanent, the medical board shall issue a certification of disability and submit it to the executive director. A certification under this section is admissible in a contested case under Section 815.511 without proving the medical board as experts.

SECTION 14. Section 814.206, Government Code, is amended by adding Subsection (f) to read as follows:

(f) A standard nonoccupational disability retirement annuity under this section is reducible, under actuarial tables adopted by the board of trustees, for a member who retires before reaching an applicable age provided by Section 814.102 or 814.104.

SECTION 15. Subsection (a), Section 814.301, Government Code, is amended to read as follows:

(a) A contributing member who has at least 10 years of service credit in the elected or employee class of membership may select a death benefit plan for the payment, if the member dies while the member is eligible to select a plan, of a death benefit annuity to a person designated by the member. Death benefit annuities available for selection by a member described in this subsection are the optional annuities provided by Sections 814.108(c)(1) and (c)(4), payable as if the member had retired at the time of death.

SECTION 16. Subsection (a), Section 814.302, Government Code, is amended to read as follows:

(a) If a contributing member eligible to select a death benefit plan under Section 814.301 dies without having made a selection, or if a selection cannot be made effective, the member's designated beneficiary may select a plan in the same manner as if the member had made the selection. If there is no designated beneficiary, the personal representative of the decedent's estate may make the selection for the benefit of the decedent's heirs or devisees. In lieu of selecting a death benefit plan, the designated beneficiary or, if there is none, the personal representative of the decedent's estate, may elect to receive a refund of contributions and any applicable payment under Section 814.401.

SECTION 17. Subsection (a), Section 815.103, Government Code, is amended to read as follows:

(a) The board of trustees shall administer all assets of the retirement system. The board is the trustee of the system's assets. The board of trustees shall hold all retirement system assets in trust for the exclusive benefit of the members and annuitants of the system and administer all operations funded by trust assets for the same purpose.

SECTION 18. Section 815.109, Government Code, is amended to read as follows:

Sec. 815.109. CORRECTION OF ERRORS. If an error in the records of the retirement system results in a person receiving more or less money than the person is entitled to receive under this subtitle, the retirement system shall correct the error in accordance with Section 802.1024 and so far as practicable shall adjust future payments so that the actuarial equivalent of the benefit to which the person is entitled is paid.

SECTION 19. Section 815.204, Government Code, is amended by adding Subsection (d) to read as follows:

(d) The medical board is not subject to subpoena regarding findings it makes in assisting the executive director under this section, and its members may not be held liable for any opinions, conclusions, or recommendations made under this section.

SECTION 20. Subsections (a), (c), and (d), Section 815.504, Government Code, are amended to read as follows:

(a) The retirement system may photograph, microphotograph, or film any record in its possession or preserve the record through electronic document imaging.

(c) A photograph, microphotograph, ~~[or]~~ film, or electronic document image of a record reproduced under Subsection (a) is equivalent to the original record for all purposes, including introduction as evidence in all courts and administrative agency proceedings. A ~~[duly]~~ certified or authenticated copy of such a record ~~[photograph, microphotograph, or film]~~ is admissible as evidence equally with the original ~~[photograph, microphotograph, or film]~~.

(d) The executive director or an authorized representative may certify the authenticity ~~[of a photograph, microphotograph, or film]~~ of a record reproduced under this section and shall charge a fee for the certified copy ~~[photograph, microphotograph, or film]~~ as provided by law.

SECTION 21. Subchapter F, Chapter 815, Government Code, is amended by adding Sections 815.5111, 815.513, and 815.514 to read as follows:

Sec. 815.5111. DILIGENT PROSECUTION OF SUIT. The plaintiff shall prosecute with reasonable diligence any suit brought under Section 815.511(f). If the plaintiff does not secure proper service of process or does not prosecute the suit within one year after it is filed, the court shall presume that the suit has been abandoned. The court shall dismiss the suit on a motion for dismissal made by or on behalf of the retirement system unless the plaintiff, after receiving appropriate notice, shows good cause for the delay.

Sec. 815.513. EXCLUSIVE REMEDIES. The remedies provided under this chapter are the exclusive remedies available to a member, retiree, beneficiary, or alternate payee.

Sec. 815.514. MAILINGS ON BEHALF OF NONPROFIT ASSOCIATION. The retirement system may make mailings on behalf of a nonprofit association of active or retired state employees described by Section 814.009, for purposes of association membership and research only, to annuitants identified in information contained in records that are in the custody of the system. The nonprofit association requesting a mailing shall pay the expenses of the mailing.

SECTION 22. Subsection (b), Section 838.108, Government Code, is amended to read as follows:

(b) A member is eligible to establish service credit under this section only for the purpose of becoming eligible to retire, or retiring, under Section 839.101(a)(3) ~~if the member has at least 120 months of actual membership service of the type of service that the member seeks to establish~~.

SECTION 23. Subsection (a), Section 840.001, Government Code, is amended to read as follows:

(a) The board of trustees of the Employees Retirement System of Texas, as provided by Subchapter A of Chapter 815, is responsible for the general administration and operation of the retirement system. The board of trustees shall hold all retirement system assets in trust for the exclusive benefit of the members and annuitants of the system and administer all operations funded by trust assets for the same purpose.

SECTION 24. Section 1551.003, Insurance Code, is amended by adding Subdivision (9-a) to read as follows:

(9-a) "Good cause" means that a person's failure to act was not because of a lack of due diligence the exercise of which would have caused a reasonable person to take prompt and timely action. A failure to act based on ignorance of the law or facts reasonably discoverable through the exercise of due diligence does not constitute good cause.

SECTION 25. Subsection (c), Section 1551.063, Insurance Code, is amended to read as follows:

(c) To accomplish the purposes of this chapter, the ~~The~~ board of trustees may release the records to:

(1) an administrator, carrier, agent, or attorney acting on behalf of the board;
(2) another governmental entity having a legitimate need for the information to perform a function of the board of trustees;

(3) an authorized ~~a~~ medical provider of the participant ~~[to accomplish the purposes of this chapter];~~ or

(4) a party in response to a subpoena issued under applicable law.

SECTION 26. Subsection (e), Section 1551.101, Insurance Code, is amended to read as follows:

(e) An individual is eligible to participate in the group benefits program as provided by Subsection (a) if the individual receives compensation for service performed for an institution of higher education pursuant to a payroll certified by an institution of higher education or by an elected or appointed officer of this state and either:

(1) is eligible to become [be] a member of the Teacher Retirement System of Texas after any waiting period provided by law before membership in that retirement system; or

(2) is employed at least 20 hours a week and is not permitted to be a member of the Teacher Retirement System of Texas because the individual is employed by an institution of higher education only in a position that as a condition of employment requires the individual to be enrolled as a student in the institution in graduate-level courses.

SECTION 27. Subchapter E, Chapter 1551, Insurance Code, is amended by adding Section 1551.220 to read as follows:

Sec. 1551.220. BENEFICIARY CAUSING DEATH OF PARTICIPANT OR BENEFICIARY OF PARTICIPANT. (a) A benefit payable on the death of a participant or the beneficiary of a participant in the group benefits program may not be paid to a person convicted of causing that death but instead is payable as if the convicted person had predeceased the decedent.

(b) The Employees Retirement System of Texas is not required to change the recipient of benefits under this section unless it receives actual notice of the conviction of a beneficiary. However, the retirement system may delay payment of a benefit payable on the death of a participant or beneficiary of a participant pending the results of a criminal investigation and of legal proceedings relating to the cause of death.

(c) For the purposes of this section, a person has been convicted of causing the death of a participant or beneficiary of a participant if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court of, causing the death of the participant or beneficiary of a participant, regardless of whether sentence is imposed or probated; and

(2) has no appeal of the conviction pending and the time provided for appeal has expired.

SECTION 28. Subsection (a), Section 1551.259, Insurance Code, is amended to read as follows:

(a) The amount of group life coverage and group accidental death and dismemberment coverage in force for a participant on the date the participant dies shall be paid, on the establishment of a valid claim, to a person surviving the death in the following order of precedence:

(1) to the beneficiary designated by the participant in a signed and witnessed document mailed before the death of the participant [~~writing received before death by the employing state agency~~];

(2) if a beneficiary is not designated, to the spouse of the participant;

(3) if Subdivisions (1) and (2) do not apply, to the children of the participant and descendants of the deceased children by representation;

(4) if Subdivisions (1)-(3) do not apply, to the parents of the participant or the survivor of the parents;

(5) if Subdivisions (1)-(4) do not apply, to the executor or administrator of the estate of the participant; or

(6) if Subdivisions (1)-(5) do not apply, to other relatives of the participant entitled under applicable laws of the participant's domicile on the date of the participant's death.

SECTION 29. Subchapter G, Chapter 1551, Insurance Code, is amended by adding Section 1551.3195 to read as follows:

Sec. 1551.3195. AMOUNT OF CONTRIBUTION FOR ANNUITANTS WHO WERE PART-TIME EMPLOYEES. An annuitant who as an employee received the benefits of a state contribution under Section 1551.319(b) for coverage during any portion of the annuitant's last employment by a state agency is not eligible to receive more than the state contribution provided under Section 1551.319(b) unless the annuitant was designated by the annuitant's employer as a full-time employee during the three-consecutive-month period before retirement.

SECTION 30. Subsection (d), Section 1551.351, Insurance Code, is amended to read as follows:

(d) A person may appeal a determination made under Subsection (a) or (b) or Section 1551.352 only to the board of trustees. A proceeding under this subsection is a contested case under Chapter 2001, Government Code. This subchapter applies to an appeal to the board of trustees under this subsection. The appellant has the burden of proof on all issues, including issues in the nature of an affirmative defense. Any[, and any] sanction imposed is not stayed during an appeal under this subsection. ~~[If a person fails to make a timely appeal, any sanction relates back to the date of the Employees Retirement System of Texas' determination.]~~ An appeal of a decision of the board of trustees under this subsection is under the substantial evidence rule.

SECTION 31. Subchapter H, Chapter 1551, Insurance Code, is amended by adding Section 1551.361 to read as follows:

Sec. 1551.361. DILIGENT PROSECUTION OF SUIT. The plaintiff shall prosecute with reasonable diligence any suit brought under Section 1551.359. If the plaintiff does not secure proper service of process or does not prosecute the suit within one year after it is filed, the court shall presume that the suit has been abandoned. The court shall dismiss the suit on a motion for dismissal made on or behalf of the Employees Retirement System of Texas, unless the plaintiff, after receiving appropriate notice, shows good cause for the delay.

SECTION 32. A retiree of the Employees Retirement System of Texas who at the time of retirement had at least 25 years of service credit in the retirement system and has served as the executive head of a legislative agency is eligible to make an election to retire as a member of the elected class of membership. The election must be made in writing to the Employees Retirement System of Texas before September 1, 2008. After the filing of such an election, the retirement system shall consider all the service credit established by the person who makes the election, including service credit established after the date the election is filed, as if it were performed as a member of the elected class of membership.

SECTION 33. (a) An individual who is eligible for participation in the group benefits program under Subdivision (2), Section 1551.108, Insurance Code, on being first eligible to retire under Subdivision (1), Subsection (a), Section 814.104, Government Code, on or after March 31, 2008, is eligible for a contribution under Section 1551.310, Insurance Code.

(b) The expiration of this section does not affect the eligibility of an individual for a contribution under Section 1551.310, Insurance Code, if the individual obtained coverage as described by Subsection (a) of this section before the expiration of this section.

(c) This section takes effect March 1, 2008. This section expires August 31, 2008.

SECTION 34. The Employees Retirement System of Texas shall recompute the annuities of all persons who retired or received a death benefit annuity from the Judicial Retirement System of Texas Plan One or the Judicial Retirement System of Texas Plan Two before January 1, 2002, as if the changes in law made by Chapter 1240, Acts of the 77th Legislature, Regular Session, 2001, to Subsection (b), Section 834.102, and Subsection (b), Section 839.102, Government Code, had been in effect on the date of the person's retirement or death. The first payment of any annuity increased under this section becomes payable with the first payment due on or after the effective date of this Act.

SECTION 35. (a) The change in law made by this Act to Section 814.202, Government Code, applies only to a person who applies for a disability retirement annuity on or after the effective date of this Act. A person who applied for a disability retirement annuity 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.

(b) The changes in law made by this Act to Sections 814.301 and 814.302, Government Code, apply only to the selection of a death benefit plan that is made on or after the effective date of this Act. A person who selected a death benefit plan 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.

(c) The change in law made by this Act to Subsection (d), Section 1551.351, Insurance Code, applies only to an appeal filed on or after the effective date of this Act. An appeal filed under that subsection 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 36. The following provisions of the Government Code are repealed:

- (1) Section 813.103;
- (2) Section 813.507;
- (3) Section 813.508;
- (4) Section 813.510;
- (5) Section 814.1042; and
- (6) Subsection (d), Section 814.202.

SECTION 37. (a) Except as provided by Subsections (b) and (c) of this section and as otherwise specifically provided by this Act, this Act takes effect September 1, 2005.

(b) The changes in law made by this Act by the amendment of Subsection (a), Section 813.513, Government Code, the repeal of Section 814.1042, Government Code, and the enactment of Section 1551.3195, Insurance Code, by this Act, take effect January 1, 2006.

(c) The change in law made by this Act to Subsection (b), Section 813.102, Government Code, takes effect September 1, 2006.

The Conference Committee Report on **SB 1176** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2221**

Senator West submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2221** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WEST
CARONA
HINOJOSA
SHAPIRO
WILLIAMS

On the part of the Senate

LUNA
MORRISON
TURNER
CALLEGARI
SEAMAN

On the part of the House

The Conference Committee Report on **HB 2221** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 266**

Senator Lindsay submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 266** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

LINDSAY
ELTIFE
SELIGER

On the part of the Senate

W. SMITH
HARPER-BROWN
MOWERY

On the part of the House

The Conference Committee Report on **HB 266** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1189**

Senator Wentworth submitted the following Conference Committee Report:

Austin, Texas
May 27, 2005

Honorable David Dewhurst
President of the Senate
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 **SB 1189** 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
AVERITT
DUNCAN
HARRIS
WEST

On the part of the Senate

HARTNETT
DAWSON
ANCHIA
GATTIS
HOPSON

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to the creation, composition, jurisdiction, and procedure of certain judicial districts, to the selection of a local administrative judge for certain counties, to the juvenile board in certain counties, to the district courts in certain counties, and to the criminal court administrator for certain counties.

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

SECTION 1. (a) Subsection (d), Section 24.151, Government Code, is amended to read as follows:

(d) A criminal complaint may be presented to the grand jury of any district court ~~[Indictments returned to the 49th District Court]~~ in Webb County, and a resulting indictment may [also] be returned to any other district court in Webb County with the appropriate criminal jurisdiction.

(b) Section 24.487, Government Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) The judge of the 341st District Court may select jury commissioners and impanel grand juries in Webb County. The judge of the 341st District Court may alternate the drawing of grand juries with the judge of any other district court in the county. By order entered on the minutes, for any term that the judge considers it necessary, the judge may order grand and petit juries to be drawn. ~~[Indictments returned in Webb County may also be returned to the 49th District Court or the 111th District Court.]~~ The 341st District Court has concurrent jurisdiction with the 49th District Court in all tax suits and cases.

(d) A criminal complaint may be presented to the grand jury of any district court in Webb County, and a resulting indictment may be returned to any other district court in Webb County with the appropriate criminal jurisdiction.

(c) Section 24.551, Government Code, is amended by adding Subsections (c), (d), (e), and (f) to read as follows:

(c) The 406th District Court has concurrent jurisdiction with the other district courts in Webb County.

(d) In addition to other jurisdiction provided by law, the 406th District Court has the:

(1) criminal jurisdiction of a county court; and

(2) civil jurisdiction of a county court in all cases under the Family Code or the Health and Safety Code.

(e) The terms of the 406th District Court begin on the first Mondays in January, April, July, and October. Each term continues until the court disposes of its business.

(f) A criminal complaint may be presented to the grand jury of any district court in Webb County, and a resulting indictment may be returned to any other district court in Webb County with the appropriate criminal jurisdiction.

(d) Section 53.001, Government Code, is amended by adding Subsection (i) to read as follows:

(i) The judge of the 406th District Court shall appoint a bailiff.

(e) Section 53.004, Government Code, is amended by adding Subsection (f) to read as follows:

(f) To be eligible to be appointed bailiff in the 406th District Court, a person must be:

(1) at least 21 years of age; and

(2) a citizen of the United States.

SECTION 2. (a) Section 24.194, Government Code, is amended by adding Subsection (d) to read as follows:

(d) All civil cases in the 92nd District Court shall be assigned and docketed at random by the district clerk using an automated system.

(b) Section 24.195, Government Code, is amended by adding Subsection (d) to read as follows:

(d) All civil cases in the 93rd District Court shall be assigned and docketed at random by the district clerk using an automated system.

(c) Section 24.241, Government Code, is amended by adding Subsection (d) to read as follows:

(d) All civil cases in the 139th District Court shall be assigned and docketed at random by the district clerk using an automated system.

(d) Section 24.385, Government Code, is amended to read as follows:

Sec. 24.385. 206TH JUDICIAL DISTRICT (HIDALGO COUNTY). (a) The 206th Judicial District is composed of Hidalgo County.

(b) All civil cases in the 206th District Court shall be assigned and docketed at random by the district clerk using an automated system.

(e) Section 24.452, Government Code, is amended to read as follows:

Sec. 24.452. 275TH JUDICIAL DISTRICT (HIDALGO COUNTY). (a) The 275th Judicial District is composed of Hidalgo County.

(b) All civil cases in the 275th District Court shall be assigned and docketed at random by the district clerk using an automated system.

(f) Section 24.478, Government Code, is amended to read as follows:

Sec. 24.478. 332ND JUDICIAL DISTRICT (HIDALGO COUNTY). (a) The 332nd Judicial District is composed of Hidalgo County.

(b) All civil cases in the 332nd District Court shall be assigned and docketed at random by the district clerk using an automated system.

(g) Section 24.515, Government Code, is amended to read as follows:

Sec. 24.515. 370TH JUDICIAL DISTRICT (HIDALGO COUNTY). (a) The 370th Judicial District is composed of Hidalgo County.

(b) All civil cases in the 370th District Court shall be assigned and docketed at random by the district clerk using an automated system.

(h) Section 24.534, Government Code, is amended by adding Subsection (c) to read as follows:

(c) All civil cases in the 389th District Court shall be assigned and docketed at random by the district clerk using an automated system.

(i) Section 24.543, Government Code, is amended by adding Subsection (c) to read as follows:

(c) All civil cases in the 398th District Court shall be assigned and docketed at random by the district clerk using an automated system.

(j) The changes in law made by this section apply to a civil case filed with the district clerk of Hidalgo County on or after the effective date of this section. A civil case filed with the district clerk of Hidalgo County before the effective date of this section is governed by the law in effect on the date the case was filed, and the former law is continued in effect for that purpose.

SECTION 3. (a) Subsection (d), Section 24.386, Government Code, is amended to read as follows:

(d) The terms of the 207th District Court begin:

(1) in Hays County on the first Mondays in February and~~[, May,]~~ August~~[, and November];~~

(2) in Caldwell County on the first Mondays in March and~~[, June,]~~ September~~[, and December];~~ and

(3) in Comal County on the first Mondays in January and~~[, April,]~~ July~~[, and October].~~

(b) Section 53.002, Government Code, is amended by adding Subsection (i) to read as follows:

(i) The judge of the 207th District Court may appoint a bailiff to serve the court in Comal County, subject to the approval of the local administrative judge.

SECTION 4. (a) Effective January 1, 2007, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.574 to read as follows:

Sec. 24.574. 430TH JUDICIAL DISTRICT (HIDALGO COUNTY). (a) The 430th Judicial District is composed of Hidalgo County.

(b) The 430th District Court shall give preference to family violence and criminal matters.

(c) All civil cases in the 430th District Court shall be assigned and docketed at random by the district clerk using an automated system.

(b) Subsection (b), Section 24.534, and Subsection (b), Section 24.543, Government Code, are repealed.

(c) The 430th Judicial District is created January 1, 2007.

(d) Subsection (b) of this section takes effect January 1, 2007.

SECTION 5. (a) Section 24.205, Government Code, is amended to read as follows:

Sec. 24.205. 103RD JUDICIAL DISTRICT (CAMERON COUNTY [~~AND WILLACY COUNTIES~~]). (a) The 103rd Judicial District is composed of Cameron County [~~and Willacy counties~~]. The court shall give preference to civil cases.

(b) The 103rd, 107th, and 138th district courts have concurrent jurisdiction.

(c) The terms of the 103rd District Court begin[
[~~(1) in Cameron County~~] on the first Mondays in February and July[~~;~~ and
[~~(2) in Willacy County on the first Mondays in January and June~~].

(d) The judges of the 103rd and 107th district courts need not impanel grand juries except in cases of emergency.

(b) Section 24.209, Government Code, is amended to read as follows:

Sec. 24.209. 107TH JUDICIAL DISTRICT (CAMERON COUNTY [~~AND WILLACY COUNTIES~~]). (a) The 107th Judicial District is composed of Cameron County [~~and Willacy counties~~]. The court shall give preference to criminal cases.

(b) The terms of the 107th District Court begin on the first Mondays in January and July.

(c) Section 24.205, relating to the 103rd District Court, contains provisions applicable to both that court and the 107th District Court.

(c) Section 24.240, Government Code, is amended to read as follows:

Sec. 24.240. 138TH JUDICIAL DISTRICT (CAMERON COUNTY [~~AND WILLACY COUNTIES~~]). (a) The 138th Judicial District is composed of Cameron County [~~and Willacy counties~~]. The court shall give preference to criminal cases.

(b) The terms of the 138th District Court begin[
[~~(1) in Cameron County~~] on the first Mondays in March, July, and November[~~;~~ and

[~~(2) in Willacy County on the first Mondays in January, May, and September~~].

(c) The judge of the 138th District Court shall impanel grand juries at all times required by law.

(d) Section 24.205, relating to the 103rd District Court, contains provisions applicable to both that court and the 138th District Court.

(d) Section 24.503, Government Code, is amended to read as follows:

Sec. 24.503. 357TH JUDICIAL DISTRICT (CAMERON COUNTY [~~AND WILLACY COUNTIES~~]). The 357th Judicial District is composed of Cameron County [~~and Willacy counties~~].

(e) Section 24.549, Government Code, is amended to read as follows:

Sec. 24.549. 404TH JUDICIAL DISTRICT (CAMERON COUNTY [~~AND WILLACY COUNTIES~~]). The 404th Judicial District is composed of Cameron County [~~and Willacy counties~~].

(f) The local administrative district judge shall transfer all cases from Willacy County that are pending in the 103rd, 107th, 138th, 357th, and 404th District Courts on September 1, 2005, to the 197th District Court.

(g) When a case is transferred as provided by Subsection (f) of this section, all processes, writs, bonds, recognizances, or other obligations issued from the 103rd, 107th, 138th, 357th, and 404th District Courts are returnable to the 197th District Court as if originally issued by that court. The obligees on all bonds and recognizances taken in and for the 103rd, 107th, 138th, 357th, and 404th District Courts and all witnesses summoned to appear in those courts are required to appear before the 197th District Court as if originally required to appear before that court.

SECTION 6. (a) Effective September 1, 2005, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.556 to read as follows:

Sec. 24.556. 412TH JUDICIAL DISTRICT (BRAZORIA COUNTY). The 412th Judicial District is composed of Brazoria County.

(b) The 412th Judicial District is created September 1, 2005.

SECTION 7. (a) Effective January 1, 2007, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.569 to read as follows:

Sec. 24.569. 425TH JUDICIAL DISTRICT (WILLIAMSON COUNTY). The 425th Judicial District is composed of Williamson County.

(b) The 425th Judicial District is created January 1, 2007.

SECTION 8. (a) Effective January 1, 2007, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.570 to read as follows:

Sec. 24.570. 426TH JUDICIAL DISTRICT (BELL COUNTY). (a) The 426th Judicial District is composed of Bell County.

(b) The terms of the 426th District Court begin on the first Mondays in January, April, July, and October.

(c) Section 24.129, relating to the 27th District Court, contains provisions applicable to both that court and the 426th District Court.

(b) Effective September 1, 2005, Subsection (b), Section 24.129, Government Code, is amended to read as follows:

(b) The 27th, 146th, ~~and~~ 169th, and 264th judicial districts have concurrent jurisdiction in Bell County.

(c) Effective January 1, 2007, Subsection (b), Section 24.129, Government Code, is amended to read as follows:

(b) The 27th, 146th, ~~and~~ 169th, 264th, and 426th judicial districts have concurrent jurisdiction in Bell County.

(d) The 426th Judicial District is created January 1, 2007.

SECTION 9. (a) Effective January 1, 2007, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.571 to read as follows:

Sec. 24.571. 427TH JUDICIAL DISTRICT (TRAVIS COUNTY). (a) The 427th Judicial District is composed of Travis County.

(b) The 427th Judicial District shall give preference to criminal matters.

(b) The 427th Judicial District is created January 1, 2007.

SECTION 10. (a) Effective September 1, 2005, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.572 to read as follows:

Sec. 24.572. 428TH JUDICIAL DISTRICT (HAYS COUNTY). The 428th Judicial District is composed of Hays County.

(b) The 428th Judicial District is created September 1, 2005.

SECTION 11. (a) Effective January 1, 2007, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.577 to read as follows:

Sec. 24.577. 433RD JUDICIAL DISTRICT (COMAL COUNTY). The 433rd Judicial District is composed of Comal County.

(b) The 433rd Judicial District is created January 1, 2007.

SECTION 12. (a) Effective January 1, 2007, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.578 to read as follows:

Sec. 24.578. 434TH JUDICIAL DISTRICT (FORT BEND COUNTY). The 434th Judicial District is composed of Fort Bend County.

(b) The 434th Judicial District is created January 1, 2007.

SECTION 13. (a) Subsection (c), Section 24.115, Government Code, is amended to read as follows:

(c) Except for Subsection (b), which applies only to the 14th District Court, this section applies to the 14th, 44th, 68th, 95th, 101st, 116th, 134th, 160th, and 162nd district courts, the Criminal Judicial District of Dallas County, and the Criminal Judicial Districts Nos. 2, 3, 4, ~~and~~ 5, 6, and 7 of Dallas County.

(b) Effective September 1, 2005, Subchapter E, Chapter 24, Government Code, is amended by adding Sections 24.906 and 24.907 to read as follows:

Sec. 24.906. DALLAS COUNTY CRIMINAL JUDICIAL DISTRICT NO. 6.

(a) The Dallas County Criminal Judicial District No. 6 is composed of Dallas County.

(b) The terms of the criminal district court no. 6 begin on the first Mondays in January, April, July, and October.

(c) Section 24.901, relating to the Criminal District Court of Dallas County, contains provisions applicable to both that court and the Dallas County Criminal District Court No. 6.

(d) Section 24.115, relating to the 14th District Court, contains provisions applicable to both that court and the Dallas County Criminal District Court No. 6.

Sec. 24.907. DALLAS COUNTY CRIMINAL JUDICIAL DISTRICT NO. 7.

(a) The Dallas County Criminal Judicial District No. 7 is composed of Dallas County.

(b) The terms of the criminal district court no. 7 begin on the first Mondays in January, April, July, and October.

(c) Section 24.901, relating to the Criminal District Court of Dallas County, contains provisions applicable to both that court and the Dallas County Criminal District Court No. 7.

(d) Section 24.115, relating to the 14th District Court, contains provisions applicable to both that court and the Dallas County Criminal District Court No. 7.

(c) The Dallas County Criminal Judicial Districts Nos. 6 and 7 are created September 1, 2005.

SECTION 14. Section 24.135, Government Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) The judge of the 33rd District Court may select jury commissioners and impanel grand juries in each county. The judge of the 33rd District Court may alternate the drawing of grand juries with the judge of any other district court in each

county within the 33rd Judicial District and may order grand and petit juries to be drawn for any term of the court as the judge determines is necessary, by an order entered in the minutes of the court. Indictments within each county may be returned to either court within that county.

(d) The 33rd District Court may hear and determine, in any county in the district convenient for the court, all preliminary or interlocutory matters in which a jury may not be demanded, in any case pending in any county in the district regardless of whether the case was filed in the county in which the hearing is held. Unless an objection is filed by a party to the suit, the 33rd District Court may hear, in any county in the district convenient for the court, any nonjury case pending in any county in the district, including divorces, adoptions, default judgments, and matters in which citation was by publication, regardless of whether the case was filed in the county in which the hearing is held.

SECTION 15. (a) Effective September 1, 2005, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.568 to read as follows:

Sec. 24.568. 424TH JUDICIAL DISTRICT (BLANCO, BURNET, LLANO, AND SAN SABA COUNTIES). (a) The 424th Judicial District is composed of Blanco, Burnet, Llano, and San Saba Counties.

(b) The jurisdiction of the 424th District Court is concurrent with the jurisdiction of the 33rd District Court.

(c) The 424th District Court has the same terms of court as the 33rd District Court.

(d) The judge of the 424th District Court may select jury commissioners and impanel grand juries in each county. The judge of the 424th District Court may alternate the drawing of grand juries with the judge of any other district court in each county within the 424th Judicial District and may order grand and petit juries to be drawn for any term of the court as the judge determines is necessary, by an order entered in the minutes of the court. Indictments within each county may be returned to either court within that county.

(e) The 424th District Court may hear and determine, in any county in the district convenient for the court, all preliminary or interlocutory matters in which a jury may not be demanded, in any case pending in any county in the district regardless of whether the case was filed in the county in which the hearing is held. Unless an objection is filed by a party to the suit, the 424th District Court may hear, in any county in the district convenient for the court, any nonjury case pending in any county in the district, including divorces, adoptions, default judgments, and matters in which citation was by publication, regardless of whether the case was filed in the county in which the hearing is held.

(b) The 424th Judicial District is created September 1, 2005.

SECTION 16. Subchapter D, Chapter 74, Government Code, is amended by adding Section 74.097 to read as follows:

Sec. 74.097. LOCAL ADMINISTRATIVE DISTRICT JUDGE FOR BLANCO, BURNET, LLANO, AND SAN SABA COUNTIES. Notwithstanding Section 74.091(b), the local administrative district judge for Blanco, Burnet, Llano, and San Saba Counties is selected on the basis of seniority from the district judges of the 33rd Judicial District and the 424th Judicial District.

SECTION 17. Section 75.014, Government Code, is amended by adding Subsection (h) to read as follows:

(h) A district judge in El Paso County or a judge of a statutory county court in El Paso County may serve as the local administrative judge for the council of judges. The council of judges shall elect a judge as local administrative judge for a term of not more than two years. The local administrative judge may not be elected on the basis of rotation or seniority.

SECTION 18. Subsection (b), Section 152.0221, Human Resources Code, is amended to read as follows:

(b) The ~~[juvenile court]~~ judge of the 33rd District Court is the chairman of the board and its chief administrative officer.

SECTION 19. Subsection (b), Section 152.0331, Human Resources Code, is amended to read as follows:

(b) The ~~[juvenile court]~~ judge of the 33rd District Court is the chairman of the board and its chief administrative officer.

SECTION 20. Subsection (a), Section 152.0521, Human Resources Code, is amended to read as follows:

(a) The Comal County Juvenile Board is composed of:

- (1) the county judge;
- (2) the ~~[local administrative statutory county]~~ judge of each county court at law in the county;
- (3) the judge of the 207th District Court;
- (4) an additional judge of the district courts having jurisdiction in Comal County, to be appointed biennially by the local administrative district judge; and
- (5) the criminal district attorney of Comal County.

SECTION 21. Subsection (b), Section 152.1561, Human Resources Code, is amended to read as follows:

(b) The ~~[juvenile court]~~ judge of the 33rd District Court is the chairman of the board and its chief administrative officer.

SECTION 22. Subsection (b), Section 152.2121, Human Resources Code, is amended to read as follows:

(b) The ~~[juvenile court]~~ judge of the 33rd District Court is the chairman of the board and its chief administrative officer.

SECTION 23. Subsection (h), Section 152.2261, Human Resources Code, is amended to read as follows:

(h) Sections 152.0002, ~~[152.0003]~~ 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of Tarrant County.

SECTION 24. Subchapter D, Chapter 152, Human Resources Code, is amended by adding Section 152.2264 to read as follows:

Sec. 152.2264. TARRANT COUNTY CRIMINAL COURT ADMINISTRATOR. (a) Subject to the approval of the commissioners court, the judges of the district and county courts in Tarrant County that give preference to criminal matters may use the services of a criminal courts administrator.

(b) A judge may not be subjected to a suit for, and is immune from liability for damages arising from, an act or omission committed while performing a duty under this section unless the act or omission is:

(1) committed intentionally, wilfully, or wantonly; or

(2) committed with:

(A) gross negligence; or

(B) conscious indifference or reckless disregard for the safety of others.

SECTION 25. Subsection (a), Section 152.2461, Human Resources Code, is amended to read as follows:

(a) The Webb County Juvenile Board is composed of the county judge, the district judges in the county, and the judge of each county court at law. The county judge may designate any member of the commissioners court to represent the judge on the board. A reference in this section to a juvenile court judge of a juvenile board member includes a person designated by the county judge under this subsection.

SECTION 26. Subsection (a), Section 152.1511, Human Resources Code, is amended to read as follows:

(a) The juvenile board of Leon County is composed of the county judge and the judges of the 12th, 87th, and 278th Judicial Districts.

SECTION 27. Except as otherwise provided by this Act, this Act takes effect September 1, 2005.

The Conference Committee Report on **SB 1189** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1116

Senator Nelson submitted the following Conference Committee Report:

Austin, Texas

May 28, 2005

Honorable David Dewhurst

President of the Senate

Honorable Tom Craddick

Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1116** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

NELSON

CARONA

HARRIS

JACKSON

WHITMIRE

On the part of the Senate

SOLOMONS

CHISUM

B. COOK

HAMRIC

TRUITT

On the part of the House

The Conference Committee Report on **HB 1116** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 334**

Senator Duncan submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate
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 **SB 334** 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
FRASER
ARMBRISTER
HINOJOSA
ELTIFE

On the part of the Senate

B. KEFFER
NIXON
PAXTON
ROSE

VAN ARSDALE

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the remedy provided for failure to disclose certain information in certain residential construction transactions.

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

SECTION 1. Chapter 26, Civil Practice and Remedies Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. CERTAIN CLASS ACTIONS PROHIBITED

Sec. 26.151. FAILURE TO DISCLOSE CERTAIN INFORMATION IN RESIDENTIAL CONSTRUCTION CONTRACT. A cause of action under Section 27.007, Property Code, may not be the subject of a class action.

SECTION 2. Subsection (b), Section 27.007, Property Code, is amended to read as follows:

(b) A ~~[If a contract does not contain the notice required by this section, the]~~ claimant may recover from the contractor a civil penalty of \$500 in addition to any other remedy provided by this chapter if:

(1) the contract does not contain the notice required by this section; and

(2) the claimant proves actual damages were proximately caused by the construction defect.

SECTION 3. The change in law made by Subchapter C, Chapter 26, Civil Practice and Remedies Code, as added by this Act, applies only to the certification of a class action on or after June 1, 2005. Certification of a class action before June 1, 2005, is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 4. The change in law made by Subsection (b), Section 27.007, Property Code, as amended by this Act, applies only to a cause of action that is brought on or after the effective date of this Act.

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

The Conference Committee Report on **SB 334** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 843

Senator Nelson submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 843** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

NELSON
CARONA
ELTIFE
ESTES
FRASER

TRUITT
GATTIS
P. KING
RIDDLE

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 843** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1227

Senator Shapiro submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 1227** 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
ZAFFIRINI

MORRISON
ROSE

JANEK

On the part of the Senate

BRANCH

HARPER-BROWN

On the part of the House

A BILL TO BE ENTITLED

AN ACT

relating to public and private postsecondary educational institutions, including enrollment in those educational institutions, payment of the costs of attending those educational institutions, and financial aid and other measures to assist students to pay those costs.

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

SECTION 1. Subsection (c), Section 51.009, Education Code, is amended to read as follows:

(c) Each of the following shall be accounted for as educational and general funds:

(1) net tuition, special course fees charged under Sections 54.051(e) and (l), ~~[Education Code,]~~ lab fees, student teaching fees, ~~[hospital and clinic fees,]~~ organized activity fees, proceeds from the sale of educational and general equipment, and indirect cost recovery fees; and

(2) hospital and clinic fees received by a state-owned clinical care facility that is operated using general revenue fund appropriations for patient care.

SECTION 2. Subdivision (1), Section 51.351, Education Code, is amended to read as follows:

(1) "General academic teaching institution," "governing board," "institution of higher education," "medical and dental unit," "public junior college," and "university system" have the meanings assigned by Section 61.003 ~~[of this code]~~.

SECTION 3. Subchapter G, Chapter 51, Education Code, is amended by adding Sections 51.355 and 51.356 to read as follows:

Sec. 51.355. NONVOTING STUDENT REGENT; UNIVERSITY SYSTEM BOARD OF REGENTS. (a) In this section, "student government" means the representative student organization directly elected by the student body of a general academic teaching institution or medical and dental unit.

(b) The chancellor of each university system shall develop a uniform application form to be used by each general academic teaching institution and medical and dental unit in the university system to solicit applicants for the position of student regent.

(c) Except as provided by Subsection (f), not later than September 1 of each year, the student government of each general academic teaching institution and medical and dental unit in a university system shall solicit applicants for the position of student regent. Not later than November 1, from among the applications received by the student government, the student government shall select five applicants as the student government's recommendations for the position of student regent and send the applications of those applicants, with the name of each applicant and the name of the institution or unit in which the applicant is enrolled removed, to the chancellor of the university system. From among those applicants, the chancellor shall select two or more applicants as the university system's recommendations for the position of student regent and shall send the applications of those applicants to the governor not later than December 1. The governor may request to review all applications for the

position of student regent received by the student governments and may request to review information required to be removed from an application by a student government under this subsection. On February 1, or as soon thereafter as practicable, the governor shall appoint one of the applicants to serve as the student regent for the system for a one-year term expiring on the next February 1. The governor is not required to appoint an applicant recommended by the chancellor.

(d) A student regent must be enrolled as an undergraduate or graduate student in a general academic teaching institution or medical and dental unit in the university system at the time of appointment and throughout the student regent's term. For purposes of this subsection, a person is considered to be enrolled in an institution or unit for a summer term if the person was enrolled in the institution or unit for the preceding semester and:

(1) is registered or preregistered at the institution or unit for the following fall semester;

(2) if the person has not completed the person's degree program, is eligible to continue the degree program at the institution or unit in the following fall semester;
or

(3) if the person completed a degree program in the preceding semester, is admitted to another degree program at the institution or unit for the following fall semester.

(e) A student regent is not a member of the board of regents of the system for which the student regent is appointed. A student regent has the same powers and duties as the members of the board of regents of the system, including the right to attend and participate in meetings of the board of regents, except that the student regent:

(1) may not vote on any matter before the board or make or second any motion before the board; and

(2) is not counted in determining whether a quorum exists for a meeting of the board or in determining the outcome of any vote of the board.

(f) The student government of the general academic teaching institution or medical and dental unit at which a current student regent was enrolled at the time of the student regent's appointment may not solicit applicants for the position of student regent for the next regular term of the position.

(g) A vacancy in the position of student regent for a university system shall be filled for the unexpired term by appointment by the governor in consultation with the chancellor of the system.

Sec. 51.356. NONVOTING STUDENT REGENT; INSTITUTION BOARD OF REGENTS. (a) This section applies only to a general academic teaching institution that is not a part of a university system.

(b) In this section, "student government" means the representative student organization directly elected by the student body of a general academic teaching institution.

(c) The president of a general academic teaching institution shall develop a uniform application form to be used to solicit applicants for the position of student regent.

(d) Not later than September 1 of each year, the student government of the general academic teaching institution shall solicit applicants for the position of student regent. Not later than November 1, from among the applications received by the student government, the student government shall select five applicants as the student government's recommendations for the position of student regent and send the applications of those applicants, with the name of each applicant removed, to the president of the institution. From among those applicants, the president shall select two or more applicants as the institution's recommendations for the position of student regent and shall send the applications of those applicants to the governor not later than December 1. The governor may request to review all applications for the position of student regent received by the student government and may request to review information required to be removed from an application by the student government under this subsection. On February 1, or as soon thereafter as practicable, the governor shall appoint one of the applicants to serve as the student regent for the institution for a one-year term expiring on the next February 1. The governor is not required to appoint an applicant recommended by the president.

(e) A student regent must be enrolled as an undergraduate or graduate student in the general academic teaching institution at the time of appointment and throughout the student regent's term. For purposes of this subsection, a person is considered to be enrolled in an institution for a summer term if the person was enrolled in the institution for the preceding semester and:

- (1) is registered or preregistered at the institution for the following fall semester;
- (2) if the person has not completed the person's degree program, is eligible to continue the degree program at the institution in the following fall semester; or
- (3) if the person completed a degree program in the preceding semester, is admitted to another degree program at the institution for the following fall semester.

(f) A student regent is not a member of the board of regents of the institution for which the student regent is appointed. A student regent has the same powers and duties as the members of the board of regents of the institution, including the right to attend and participate in meetings of the board of regents, except that the student regent:

- (1) may not vote on any matter before the board or make or second any motion before the board; and
- (2) is not counted in determining whether a quorum exists for a meeting of the board or in determining the outcome of any vote of the board.

(g) A vacancy in the position of student regent for an institution shall be filled for the unexpired term by appointment by the governor in consultation with the president of the institution.

SECTION 4. Subsection (e), Section 52.17, Education Code, is amended to read as follows:

(e) Amounts paid to the board by the federal Lender's Special Allowance program may:

- (1) be deposited in:
 - (A) the Texas college interest and sinking fund; or
 - (B) [5] a board interest and sinking fund;[5] or

(2) be used by the board for the administration of student loan and grant programs ~~[and the Teacher Loan Program and Future Teacher Loan Program authorized under House Bill 72, 68th Legislature, 2nd Called Session, 1984, or other programs]~~ administered by the board, including the making of grants under Subchapter M, Chapter 56 ~~[as specified by the legislature in the General Appropriations Act].~~

SECTION 5. Section 52.31, Education Code, is amended to read as follows:

Sec. 52.31. PARTICIPATING INSTITUTIONS. In this subchapter, "participating [A participating] higher educational institution" means a public or private nonprofit [is any] institution of higher education, [public or private nonprofit,] including a junior college, [which is recognized or] accredited by a recognized accrediting agency as defined by Section 61.003, or a regional education service center or other entity that offers an alternative educator certification program approved by the State Board for Educator Certification, that:

(1) is located in this state; and

(2) [the Texas Education Agency or the Coordinating Board, Texas College and University System, or its successors, and which] complies with the provisions of this chapter and the rules [and regulations] of the board promulgated in accordance with this chapter.

SECTION 6. Section 52.32, Education Code, is amended by amending Subsections (a) and (b) and adding Subsection (a-1) to read as follows:

(a) The board may authorize loans from the Texas Opportunity Plan Fund to a qualified ~~[students if the]~~ applicant who:

(1) is a resident of this state [Texas] as defined by the board in accordance with Subchapter B, Chapter 54 ~~[of this code];~~

(2) has been accepted for enrollment at a participating higher educational institution, provided that if the institution is a public or private [any] postsecondary educational institution, the institution must be [within the State of Texas, public or private, which has been] approved by an agency of the United States government for the purpose of guaranteeing the maker of such loans against loss due to the death, disability, or default of the borrower~~[- If the postsecondary institution that the student has been accepted to attend was not a participating institution as defined in Section 52.31 of this code on May 1, 1985, the applicant must provide evidence that he is unable to obtain a guaranteed student loan from a commercial lender except as provided by Subsection (b) of this section];~~

(3) has established that the student [he] has insufficient resources to finance the student's [his] college education or alternative educator certification program;

(4) has submitted to the board at least two references, including the names of the persons giving those references and appropriate contact information for those persons [been recommended by reputable persons in his home community]; and

(5) has complied with other requirements established by the rules ~~[and regulations]~~ adopted by the board in conformity with this chapter.

(a-1) Except as provided by Subsection (b), if the institution to which the applicant has been accepted for enrollment was not a participating institution, as defined by Section 52.31, on May 1, 1985, the applicant must provide evidence that the applicant is unable to obtain a guaranteed student loan from a commercial lender.

(b) If a loan applicant is enrolled at a career school or college in a degree program that is approved by the board or at a regional education service center or other entity in an alternative educator certification program that is approved by the State Board for Educator Certification, the applicant is not required to provide evidence that the applicant is unable to obtain a guaranteed student loan from a commercial lender under Subsection (a-1) ~~[(a)(2) of this section]~~.

SECTION 7. Section 52.33, Education Code, is amended to read as follows:

Sec. 52.33. AMOUNT OF LOAN. The amount of the loan to any qualified applicant shall be limited to the difference between the financial resources available to the applicant ~~[him]~~, including but not limited to the applicant's ~~[his]~~ income from parents and other sources, scholarships, gifts, grants, other financial aid, and the amount the applicant ~~[he]~~ can reasonably be expected to earn, and the amount necessary to pay the applicant's ~~[his]~~ reasonable expenses as a student at the participating institution of higher education where the applicant ~~[he]~~ has been accepted for enrollment, under the rules and regulations adopted by the board. The total loan to any individual student may never be more than the amount the student ~~[he]~~ can reasonably be expected to repay in the ~~[a]~~ maximum loan period provided by board rule ~~[of 10 years after he is last enrolled in a participating institution]~~, except as otherwise provided for in this chapter.

SECTION 8. Section 52.35, Education Code, is amended to read as follows:

Sec. 52.35. TERM OF LOANS. The term of all authorized loans must be for the shortest possible period consistent with general practice by issuers of student loans, as determined by the board. ~~[However, no loan may be made to any student for a period longer than 10 years from the date he is last enrolled in a participating institution.]~~

SECTION 9. Subsection (c), Section 52.91, Education Code, is amended to read as follows:

(c) The board shall repay bonds issued by the board to fund the Texas B-On-time student loan program using legislative appropriations and money collected by the board as repayment for Texas B-On-time student loans awarded by the board. The board may use tuition set aside under Section 56.465 to repay bonds issued by the board for the Texas B-On-time student loan program. The board may not use money collected by the board as repayment for student loans awarded by the board under Subchapter C to repay bonds issued by the board for the Texas B-On-time student loan program under Section 56.464(b).

SECTION 10. Section 54.007, Education Code, is amended by adding Subsection (f) to read as follows:

(f) A student may elect to pay the tuition and fees of an institution of higher education by installment under this section regardless of whether the student intends to apply a financial aid award administered by the institution toward the tuition and fees, except that a student whose financial aid award or awards are available to cover the total amount of tuition and fees may not pay by installment under this section. On receipt of notice of a student's election to pay tuition and fees by installment, the governing board of the institution shall apply any financial aid award administered for the student toward the amount of tuition and fees due for that semester or summer session until the tuition and fees are paid in full and shall immediately release any

remaining amount of the award to the student, except that the institution is not required to apply the award or awards toward the total amount of tuition and fees in exigent circumstances as determined by the institution.

SECTION 11. Subchapter A, Chapter 54, Education Code, is amended by adding Section 54.0071 to read as follows:

Sec. 54.0071. AUTHORITY OF INSTITUTION TO PROVIDE PAYMENT OPTIONS FOR STUDENT WITH DELAYED FINANCIAL AID. (a) The governing board of an institution of higher education may postpone the due date for the payment of all or part of the tuition and fees for a student for a semester or summer session in which the student will receive one or more delayed financial aid awards if:

(1) the student has not received the awards by the regular due date for payment of the tuition and fees; and

(2) the student agrees to assign to the institution a portion of the awards equal to the amount of tuition and fees for which the due date is postponed.

(b) A postponed due date under Subsection (a) applies only to the portion of tuition and fees to be covered by the student's delayed financial aid awards. When the financial aid awards become available, a governing board that postpones a due date under this section shall apply the awards toward the amount of tuition and fees due and immediately release any remaining amount of the awards to the student.

(c) If after the due date for a student's tuition and fees is postponed under this section the student becomes ineligible to receive one or more of the delayed financial aid awards, or the amount awarded is less than the amount of tuition and fees due, the governing board shall provide the student a reasonable period, not to exceed 30 days, to pay the unpaid amount of tuition and fees. The board may deny a student credit for work done in the semester or summer session if the student fails to pay the tuition and fees by the end of that period.

(d) The Texas Higher Education Coordinating Board shall prescribe procedures for the administration of this section.

(e) If a student with delayed financial aid awards has elected to pay tuition and fees by installment as permitted by Section 54.007 and if the governing board elects to postpone the due date for the student's tuition and fees as authorized by this section, the governing board in the manner provided by this section shall postpone the due date for each installment payment that becomes due before the student receives the awards.

SECTION 12. Subchapter B, Chapter 54, Education Code, is amended by adding Section 54.0516 to read as follows:

Sec. 54.0516. SPECIAL SUMMER TUITION RATES AT TEXAS A&M UNIVERSITY: PILOT PROGRAM. (a) This section applies only to a resident undergraduate student enrolled for a summer term or session at Texas A&M University.

(b) Tuition, other than tuition under Section 54.0513, charged to a student to whom this section applies is three-fourths of the amount otherwise provided by this subchapter.

(c) The amount that the board of regents may charge as tuition under Section 54.0513 to a student to whom this section applies may not exceed the amount of other tuition the board is authorized to charge to the student under Subsection (b).

(d) This section applies only if the legislature specifically appropriates money to Texas A&M University for the state fiscal biennium ending August 31, 2007, to cover the tuition revenue lost to the institution by the application of this section.

(e) This section applies only to a summer term or session in 2006 or 2007. This section expires January 1, 2008.

SECTION 13. Subsection (c), Section 54.214, Education Code, is amended to read as follows:

(c) To be eligible for an exemption under this section, a person must:

(1) be a resident of this state;

(2) be a school employee serving in any capacity;

(3) for the initial term or semester for which the person receives an exemption under this section, have ~~who~~ worked as an educational aide for at least one school year during the five years preceding that ~~the~~ term or semester ~~for which the person receives the exemption~~;

(4) ~~(3)~~ establish financial need as determined by coordinating board rule;

(5) ~~(4)~~ be enrolled in courses required for teacher certification at the institution of higher education granting the exemption;

(6) ~~(5)~~ maintain an acceptable grade point average as determined by coordinating board rule; and

(7) ~~(6)~~ comply with any other requirements adopted by the coordinating board under this section.

SECTION 14. Section 54.2155, Education Code, is amended to read as follows:

Sec. 54.2155. PAYMENT OF TUITION ASSISTANCE FOR MEMBERS OF STATE MILITARY FORCES. (a) For ~~In the manner established by the Texas Higher Education Coordinating Board, for~~ each semester, the adjutant general of the state military forces ~~coordinating board~~ shall certify to institutions of higher education as described by Section 431.090, Government Code, information identifying the persons to whom the adjutant general ~~of the state military forces~~ has awarded tuition assistance under that section ~~Section 431.090, Government Code, if the coordinating board has determined that sufficient money is available to reimburse institutions for tuition exemptions granted under this section and to make tuition assistance grants under Subsection (c)~~].

(b) An institution of higher education shall exempt a person certified by the adjutant general as described by Subsection (a) ~~coordinating board under this section~~ from the payment of tuition for the semester credit hours for which the person enrolls, not to exceed 12 semester credit hours. If the person is not charged tuition at the rate provided for other Texas residents, the amount of the exemption may not exceed the amount of tuition the person would be charged as a Texas resident for the number of semester credit hours for which the person enrolls, not to exceed 12 semester credit hours.

~~[(b) From money appropriated for purposes of this section, the coordinating board shall reimburse an institution of higher education in an amount equal to the amount of the tuition exemption the institution grants to a person under Subsection (a).]~~

~~[(c) From money appropriated for purposes of this section, the coordinating board shall make a grant to a person attending a private or independent institution of higher education, as defined by Section 61.003, to whom the adjutant general has awarded tuition assistance for the semester under Section 431.090, Government Code. The amount of a grant under this section is an amount equal to the average amount of reimbursement the coordinating board estimates will be paid per student for the same semester under Subsection (b).]~~

SECTION 15. Subsection (b), Section 54.5021, Education Code, is amended to read as follows:

(b) The student deposit fund of an institution of higher education shall be used, at the discretion of the institution's governing board, for making scholarship awards to needy and deserving students of the institution and making grants under Subchapter C, Chapter 56, to resident students of the institution. The governing board shall administer the scholarship awards for the institution, including the selection of recipients and the amounts and conditions of the awards. The recipients of the scholarships must be residents of the state as defined for tuition purposes.

SECTION 16. Section 56.033, Education Code, is amended by adding Subsection (e) to read as follows:

(e) To supplement money set aside under Subsection (a), the governing board of an institution of higher education may use money received by the institution from the fee for issuance of collegiate license plates under Section 504.615, Transportation Code, for awarding Texas Public Educational Grants. The board may use the money to award grants to both resident and nonresident students, except that the board shall give priority to grants for resident students. Notwithstanding Subsection (b), the board may not use the money for emergency loans under Subchapter D.

SECTION 17. Section 56.051, Education Code, is amended to read as follows:

Sec. 56.051. EMERGENCY LOANS. Each institution of higher education may establish an emergency loan program under which students are loaned money to pay tuition, ~~and~~ fees, and the costs of textbooks.

SECTION 18. Section 56.052, Education Code, is amended to read as follows:

Sec. 56.052. ELIGIBILITY. (a) The governing board of each institution shall adopt rules establishing eligibility criteria. The rules must allow eligible students to obtain loans on the basis of the order of receipt of applications, except as provided by Subsection (b).

(b) The governing board may adopt rules that allow the institution to select loan recipients from the eligible applicants according to financial need, regardless of when their applications are received, if money available for the program is insufficient to provide loans to each eligible applicant.

SECTION 19. Section 56.076, Education Code, is amended to read as follows:

Sec. 56.076. ELIGIBLE EMPLOYER. An eligible institution may enter into agreements with employers that participate in the work-study program. To be eligible to participate in the work-study program, an employer must:

(1) provide part-time employment to an eligible student in nonpartisan and nonsectarian activities;

(2) provide, insofar as is practicable, employment to an eligible student that is related to the student's academic interests;

(3) use Texas college work-study program positions only to supplement and not to supplant positions normally filled by persons not eligible to participate in the work-study program;

(4) provide from sources other than federal college work-study program funds a percentage [not less than 30 percent] of an employed student's wages that is equal to the percentage of a student's wages that the employer would be required to provide to the student in that academic year under the [and 100 percent of other employee benefits for the employed student from sources other than] federal college work-study program [funds, if the employer is a nonprofit entity]; and

(5) provide from sources other than federal college work-study funds [not less than 50 percent of an employed student's wages and] 100 percent of other employee benefits for the employed student[, if the employer is a profit-making entity].

SECTION 20. Subchapter K, Chapter 56, Education Code, is amended by adding Section 56.2011 to read as follows:

Sec. 56.2011. DEFINITION. In this subchapter, "coordinating board" means the Texas Higher Education Coordinating Board.

SECTION 21. Section 56.202, Education Code, is amended to read as follows:

Sec. 56.202. PURPOSE. (a) The Early High School Graduation Scholarship program is created to increase efficiency in the Foundation School Program and to provide assistance for tuition or tuition and mandatory fees, as provided by Section 56.204, to an eligible person to enable that person to attend a [Texas] public or private institution of higher education in this state.

(b) A portion of the savings to the Foundation School Program that occur as a result of the program is dedicated to state credits for tuition or tuition and mandatory fees, as applicable, provided to an eligible person under the program.

SECTION 22. Section 56.203, Education Code, as amended by Chapters 365 and 1317, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

Sec. 56.203. ELIGIBLE PERSON. (a) To be eligible for an award through the Early High School Graduation Scholarship program, a person must:

(1) ~~[have the written approval of at least one of the person's parents or a person standing in parental relation to the person, if the person graduated from high school in not more than 41 consecutive months;~~

~~[(2)] have [successfully completed the recommended or advanced high school program established under Section 28.025 and] graduated from [a Texas public] high school;~~

(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 45 consecutive months, [or, if the person graduated] 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 [in not more than 45 consecutive months]; 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) [(3)] have attended high school exclusively in one or more public high schools in this state [only]; and

(3) [(4)] be a Texas resident as defined by coordinating board [Texas Higher Education Coordinating Board] rule.

(b) The [A person's] eligibility for the Early High School Graduation Scholarship program of a person described by Subsection (a)(1)(A) or (B) ends on the sixth anniversary of the date that the person first becomes eligible to participate in the program, unless the person is provided additional time to participate in the program under Subsection (c).

(c) The coordinating board shall adopt rules to provide a person described by Subsection (a)(1)(A) or (B) who is otherwise eligible to participate in the Early High School Graduation Scholarship program additional time to use a state credit for tuition and mandatory fees under the program. The rules must require a person seeking an extension under this subsection to show hardship or other good cause that prevents the person from enrolling in or continuing enrollment in an eligible institution during the period provided by Subsection (b). For purposes of this subsection, hardship or other good cause includes a severe illness or other debilitating condition, [or] responsibility for the care of a sick, injured, or needy person, or active duty or other service in the United States armed forces.

(d) A person who does not satisfy the curriculum requirements for the recommended or advanced high school program as required to establish eligibility under Subsection (a)(1)(A) or (B) [of Subsection (a)(2)] is considered to have satisfied those requirements if the high school from which the person graduated indicates on the person's transcript that the person was unable to complete the appropriate curriculum within the time prescribed by that subsection solely because of a reason beyond the person's control, such as [necessary courses were unavailable to the person at the appropriate times in the person's high school career as a result of course scheduling,] lack of enrollment capacity[, or] a shortage of qualified teachers [another cause not within the person's control].

SECTION 23. The heading to Section 56.204, Education Code, is amended to read as follows:

Sec. 56.204. ENTITLEMENT[; ~~MATCHING CREDIT~~].

SECTION 24. Subsection (a), Section 56.204, Education Code, is amended to read as follows:

(a) An eligible person under the Early High School Graduation Scholarship program is entitled to a state credit to apply toward tuition or ~~[pay]~~ tuition and mandatory fees, as applicable, at a public or private institution of higher education in this state in the following amounts:

(1) \$2,000 to apply toward tuition and mandatory fees if the person successfully completed the recommended or advanced high school program established under Section 28.025 and graduated from high school on or after September 1, 2005, in 36 consecutive months or less and an additional \$1,000 to apply toward tuition and mandatory fees if the person graduated with at least 15 hours of college credit;

(2) \$500 to apply toward tuition and mandatory fees if the person successfully completed the recommended or advanced high school program established under Section 28.025 and graduated from high school on or after September 1, 2005, in more than 36 consecutive months but not more than 41 consecutive months and an additional \$1,000 to apply toward tuition and mandatory fees if the person graduated with at least 30 hours of college credit; ~~[or]~~

(3) \$1,000 to apply toward tuition and mandatory fees if the person successfully completed the recommended or advanced high school program established under Section 28.025 and graduated from high school on or after September 1, 2005, in more than 41 consecutive months but not more than 45 consecutive months with at least 30 hours of college credit; or

(4) \$1,000 to apply only toward tuition if the person graduated before September 1, 2005, after successfully completing the requirements for a high school diploma in not more than 36 consecutive months.

SECTION 25. Section 56.205, Education Code, is amended to read as follows:

Sec. 56.205. ISSUANCE OF CERTIFICATE. As soon as practicable after the coordinating board confirms with the high school from which a person graduated that the person is eligible for an award through the Early High School Graduation Scholarship program, the ~~[The]~~ coordinating board shall provide a certificate for state credits for tuition or tuition and mandatory fees, as applicable, to the ~~[an]~~ eligible person.

SECTION 26. Subsections (a), (c), and (d), Section 56.206, Education Code, are amended to read as follows:

(a) On enrollment of an eligible person in an eligible institution of higher education, the institution shall apply to the person's charges for tuition or tuition and mandatory fees, as applicable, for the enrollment period an amount equal to the lesser of:

(1) the amount of the state credit available to the person; or

(2) the person's actual tuition or tuition and mandatory fees, as applicable.

(c) For each student using a state credit for tuition or tuition and mandatory fees under this subchapter, the institution of higher education shall report to the coordinating board the following information:

(1) the student's name;

(2) the school district from which the student graduated from high school;

~~[and]~~

(3) the amount of the state credit applied; and

(4) whether the state credit was applied toward tuition or tuition and mandatory fees.

(d) Subject to Section 56.203(b), an eligible person may use the state credit for enrollment in an eligible institution of higher education during any semester or summer session, except the ~~[person's]~~ initial use of the credit by a person who qualifies for an award under Section 56.203(a)(1)(A) or (B) may not be for enrollment during any term of a summer session immediately following the person's graduation from high school.

SECTION 27. Subsection (b), Section 56.207, Education Code, is amended to read as follows:

(b) On receipt of a report from the coordinating board under Subsection (a), the commissioner of education shall transfer to the coordinating board, from funds appropriated for the Foundation School Program, an amount sufficient to pay each eligible institution of higher education the amount of state credit for tuition or tuition and mandatory fees, as applicable, that is applied by the institution during the period covered by the report.

SECTION 28. Subsection (b), Section 56.2075, Education Code, is amended to read as follows:

(b) The commissioner of education shall distribute money from the foundation school fund in an amount sufficient to pay each school district under Subsection (a).

SECTION 29. Subchapter K, Chapter 56, Education Code, is amended by adding Section 56.210 to read as follows:

Sec. 56.210. NOTIFICATION BY HIGH SCHOOLS REGARDING PROGRAM REQUIREMENTS. (a) When the student initially enrolls in the school, each public high school in this state shall provide information regarding the requirements of the Early High School Graduation Scholarship program:

(1) to each freshman student enrolled when the school year begins and to a parent, conservator, or guardian of the student; and

(2) to each student who:

(A) enrolls in the school before the student's senior year; and

(B) did not receive the information under Subdivision (1).

(b) The information provided under Subsection (a) must include:

(1) the number and type of high school course credits necessary to satisfy the eligibility requirements for the Early High School Graduation Scholarship program; and

(2) the appropriate order in which those high school course credits must be earned to satisfy the eligibility requirements, including course credits related to the curriculum for the recommended or advanced high school program.

(c) The Texas Education Agency shall prepare a publication that includes the information required to be provided under this section and shall post that publication on the agency's website in a form that enables a public high school to reproduce the information for distribution to students, parents, and other persons as required by this section.

SECTION 30. Section 56.301, Education Code, is amended to read as follows:

Sec. 56.301. DEFINITIONS. In this subchapter:

(1) "Coordinating board" means the Texas Higher Education Coordinating Board.

(2) "Eligible institution" means[~~:-~~

~~[(A)] an institution of higher education that offers one or more undergraduate degree or certification programs[; or~~

~~[(B) a private or independent institution of higher education].~~

(3) ~~"Public junior college" ["Private or independent institution of higher education," "public junior college,"]~~ and "public technical institute" have the meanings assigned by Section 61.003.

SECTION 31. Section 56.302, Education Code, is amended to read as follows:

Sec. 56.302. PROGRAM NAME; PURPOSE. (a) Except as provided under Section 56.310(c), the [The] student financial assistance program authorized by this subchapter is known as the Toward EXcellence, Access, & Success (TEXAS) grant program, and an individual grant awarded under this subchapter is known as a TEXAS grant.

(b) The purpose of this subchapter is to provide a grant of money to enable eligible students to attend public [~~and private~~] institutions of higher education in this state.

SECTION 32. Subchapter M, Chapter 56, Education Code, is amended by adding Section 56.3021 to read as follows:

Sec. 56.3021. STUDENTS ENROLLED IN PRIVATE OR INDEPENDENT INSTITUTIONS: LIMITED ELIGIBILITY FOR GRANT. (a) Notwithstanding any other provision of this subchapter, a student who was awarded a TEXAS grant under this subchapter to pay the costs of enrollment in a private or independent institution of higher education for the 2005 fall semester or an earlier academic period may continue to receive grants under this subchapter while enrolled in a private or independent institution of higher education if the student is otherwise eligible to receive a grant under this subchapter.

(b) For purposes of determining the eligibility of a student to continue to receive a grant under this section, a reference in this subchapter to an eligible institution includes a private or independent institution of higher education.

(c) The amount of a TEXAS grant under this section for a student enrolled full-time at a private or independent institution of higher education is the amount determined by the coordinating board as the average statewide amount of tuition and required fees that a resident student enrolled full-time in a baccalaureate degree program would be charged for that semester or term at general academic teaching institutions.

(d) Notwithstanding Subsection (c) or other law, the total amount of financial aid that a student enrolled in a private or independent institution of higher education is eligible to receive in a state fiscal year from TEXAS grants awarded under this section may not exceed the maximum amount the student may receive in tuition equalization grants in that fiscal year as determined under Subchapter F, Chapter 61.

(e) Notwithstanding Subsection (c) or other law, a student enrolled in a private or independent institution of higher education may not receive a TEXAS grant under this section and a tuition equalization grant under Subchapter F, Chapter 61, for the same semester or other term, regardless of whether the student is otherwise eligible for

both grants during that semester or term. A student who but for this subsection would be awarded both a TEXAS grant and a tuition equalization grant for the same semester or other term is entitled to receive only the grant of the greater amount.

(f) This section expires September 1, 2015.

SECTION 33. Subsection (a), Section 56.304, Education Code, is amended to read as follows:

(a) To be eligible initially for a TEXAS grant, a person must:

- (1) be a resident of this state as determined by coordinating board rules;
- (2) meet either of the following academic requirements:

(A) be a graduate of a public or accredited private high school in this state who graduated not earlier than the 1998-1999 school year and who completed the recommended or advanced high school curriculum established under Section 28.002 or 28.025 or its equivalent; or

(B) have received an associate degree from a public or private [an eligible] institution of higher education not earlier than May 1, 2001;

- (3) meet financial need requirements as defined by the coordinating board;

(4) be enrolled in an undergraduate degree or certificate program at an eligible institution;

- (5) be enrolled as:

(A) an entering undergraduate student for at least three-fourths of a full course load for an entering undergraduate student, as determined by the coordinating board, not later than the 16th month after the date of the person's graduation from high school; or

(B) an entering student for at least three-fourths of a full course load for an undergraduate student as determined by the coordinating board, not later than the 12th month after the month the person receives an associate degree from a public or private [an eligible] institution of higher education;

- (6) have applied for any available financial aid or assistance; and

(7) comply with any additional nonacademic requirement adopted by the coordinating board under this subchapter.

SECTION 34. Subsection (e), Section 56.305, Education Code, is amended to read as follows:

(e) For the purpose of this section, a person makes satisfactory academic progress toward an undergraduate degree or certificate only if:

(1) in the person's first academic year the person meets the satisfactory academic progress requirements of the institution at which the person is enrolled; and

- (2) in a subsequent academic year, the person:

(A) completes at least 75 percent of the semester credit hours attempted in the student's most recent academic year; and

(B) earns an overall grade point average of at least 2.5 on a four-point scale or the equivalent on coursework previously attempted at public or private institutions of higher education.

SECTION 35. Section 56.307, Education Code, is amended by amending Subsections (a), (c), (d), (i), and (j) and adding Subsections (d-1), (i-1), and (l) to read as follows:

(a) The amount of a TEXAS grant for a semester or term for a person enrolled full-time at an eligible institution other than an institution covered by Subsection ~~[(b),]~~ (c)[~~5~~] or (d) is the amount determined by the coordinating board as the average statewide amount of tuition and required fees that a resident student enrolled full-time in a baccalaureate degree program would be charged for that semester or term at general academic teaching institutions.

(c) The amount of a TEXAS grant for a semester or term for a student enrolled full-time at a public technical institute is the amount determined by the coordinating board as the average statewide amount of tuition and required fees that a resident student enrolled full-time in an associate degree or certificate program would be charged for that semester or term at public technical institutes.

(d) The amount of a TEXAS grant for a semester or term for a student enrolled full-time at a public junior college is the amount determined by the coordinating board as the average statewide amount of tuition and required fees that a student who is a resident of the junior college district and is enrolled full-time in an associate degree or certificate program would be charged for that semester or term at public junior colleges.

(d-1) The coordinating board shall determine the average statewide tuition and fee amounts for a semester or term of the next academic year for purposes of this section by using the amounts of tuition and required fees that will be charged by the applicable eligible institutions for that semester or term in that academic year. The board may estimate the amount of the charges for a semester or term in the next academic year by an institution if the relevant information is not yet available to the board.

(i) A public institution of higher education may not:

(1) unless the institution complies with Subsection (j), charge a person attending the institution who also receives a TEXAS grant an amount of tuition and required fees in excess of the amount of the TEXAS grant received by the person; or

(2) deny admission to or enrollment in the institution based on a person's eligibility to receive a TEXAS grant or a person's receipt of a TEXAS grant.

(i-1) A public institution of higher education may elect to award a TEXAS grant to any student in an amount that is less than the applicable amount established under Subsection (a), (c), (d), or (e).

(j) A public ~~An~~ institution of higher education shall ~~may~~ use other available sources of financial aid, other than a loan, to cover any difference in the amount of a TEXAS grant awarded to the student and the actual amount of tuition and required fees at the institution if the difference results from:

(1) a reduction in the amount of a TEXAS grant under Subsection (i-1); or

(2) a deficiency in the amount of the grant as established under Subsection (a), (c), (d), or (e), as applicable, to cover the full amount of tuition and required fees charged to the student by the institution.

(l) The coordinating board shall provide information regarding the Texas B-On-time loan program established under Subchapter Q to each eligible applicant who receives less than the full amount of a TEXAS grant.

SECTION 36. Subsection (a), Section 56.3075, Education Code, is amended to read as follows:

(a) If the money available for TEXAS grants in a period for which grants are awarded is sufficient to provide grants to all eligible applicants in amounts specified by Section 56.307, the [The] coordinating board may use any excess money available for TEXAS grants to award a grant in an amount not more than three times the amount that may be awarded under Section 56.307 to a student who:

(1) is enrolled in a program that fulfills the educational requirements for licensure or certification by the state in a health care profession that the coordinating board, in consultation with the Texas Workforce Commission and the statewide health coordinating council, has identified as having a critical shortage in the number of license holders needed in this state;

(2) has completed at least one-half of the work toward a degree or certificate that fulfills the educational requirement for licensure or certification; and

(3) meets all the requirements to receive a grant award under Section 56.307.

SECTION 37. Section 56.310, Education Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The coordinating board may solicit and accept gifts, ~~and~~ grants, and donations from any public or private source for the purposes of this subchapter.

(c) In performing its duties under Subsection (a), the coordinating board may develop and implement an appropriate process for the naming and sponsoring of the program created under this subchapter, an individual grant awarded under this subchapter, or any item received by the coordinating board under Subsection (a).

SECTION 38. The heading to Subchapter P, Chapter 56, Education Code, is amended to read as follows:

SUBCHAPTER P. TEXAS EDUCATIONAL OPPORTUNITY ~~[TOWARD EXCELLENCE, ACCESS, & SUCCESS (TEXAS)]~~ GRANT ~~[H]~~ PROGRAM

SECTION 39. Subsection (a), Section 56.402, Education Code, is amended to read as follows:

(a) The student financial assistance program authorized by this subchapter is known as the Texas Educational Opportunity Grant Program ~~[Toward EXcellence, Access, & Success (TEXAS) grant II program, and an individual grant awarded under this subchapter is known as a TEXAS grant II].~~

SECTION 40. Section 56.403, Education Code, is amended to read as follows:

Sec. 56.403. ADMINISTRATION OF PROGRAM. (a) The coordinating board shall administer the ~~[TEXAS]~~ grant ~~[H]~~ program and shall adopt any rules necessary to implement the ~~[TEXAS]~~ grant ~~[H]~~ program or this subchapter. The coordinating board shall consult with the student financial aid officers of eligible institutions in developing the rules.

(b) The coordinating board shall adopt rules to provide a ~~[TEXAS]~~ grant under this subchapter ~~[H]~~ to an eligible student enrolled in an eligible institution in a manner consistent with the administration of federal student financial aid programs.

(c) The total amount of grants awarded under the ~~[TEXAS]~~ grant ~~[H]~~ program may not exceed the amount available for the program from appropriations, gifts, grants, or other funds.

(d) In determining who should receive a [TEXAS] grant under this subchapter [H], the coordinating board and the eligible institutions shall give highest priority to awarding [TEXAS] grants [H] to students who demonstrate the greatest financial need.

SECTION 41. Section 56.404, Education Code, is amended to read as follows:

Sec. 56.404. INITIAL ELIGIBILITY FOR GRANT. (a) To be eligible initially for a grant under the [TEXAS] grant [H] program, a person must:

- (1) be a resident of this state as determined by coordinating board rules;
- (2) meet financial need requirements as defined by the coordinating board;
- (3) be enrolled in an associate degree or certificate program at an eligible institution;
- (4) be enrolled as an entering student for at least one-half of a full course load for an entering student in the associate degree or certificate program, as determined by the coordinating board;
- (5) have applied for any available financial aid or assistance; and
- (6) comply with any additional nonacademic requirement adopted by the coordinating board under this subchapter.

(b) A person is not eligible to receive a [TEXAS] grant under this subchapter [H] if the person has been convicted of a felony or an offense under Chapter 481, Health and Safety Code (Texas Controlled Substances Act), or under the law of another jurisdiction involving a controlled substance as defined by Chapter 481, Health and Safety Code, unless the person has met the other applicable eligibility requirements under this subchapter and has:

- (1) received a certificate of discharge by the Texas Department of Criminal Justice or a correctional facility or completed a period of probation ordered by a court and at least two years have elapsed from the date of the receipt or completion; or
- (2) been pardoned, had the record of the offense expunged from the person's record, or otherwise been released from the resulting ineligibility to receive a grant under this subchapter.

(c) A person is not eligible to receive a [TEXAS] grant under this subchapter [H] if the person has been granted an associate or baccalaureate degree.

(d) A person may not receive a [TEXAS] grant under this subchapter [H] for more than 75 semester credit hours or the equivalent.

(e) A person may not receive a [TEXAS] grant under this subchapter [H] if the person is eligible for a TEXAS grant.

(f) A person's eligibility for a [TEXAS] grant under this subchapter [H] ends on the fourth anniversary of the initial award of a [TEXAS] grant under this subchapter [H] to the person and the person's enrollment in an eligible institution.

SECTION 42. Section 56.405, Education Code, is amended to read as follows:

Sec. 56.405. CONTINUING ELIGIBILITY AND ACADEMIC PERFORMANCE REQUIREMENTS. (a) After initially qualifying for a [TEXAS] grant under this subchapter [H], a person may continue to receive a [TEXAS] grant under this subchapter [H] during each semester or term in which the person is enrolled at an eligible institution only if the person:

- (1) meets financial need requirements as defined by the coordinating board;

(2) is enrolled in an associate degree or certificate program at an eligible institution;

(3) is enrolled for at least one-half of a full course load for a student in an associate degree or certificate program, as determined by the coordinating board;

(4) makes satisfactory academic progress toward an associate degree or certificate; and

(5) complies with any additional nonacademic requirement adopted by the coordinating board.

(b) A person is not eligible to continue to receive a [TEXAS] grant [H] under this section if the person has been convicted of a felony or an offense under Chapter 481, Health and Safety Code (Texas Controlled Substances Act), or under the law of another jurisdiction involving a controlled substance as defined by Chapter 481, Health and Safety Code, unless the person has met the other applicable eligibility requirements under this subchapter and has:

(1) received a certificate of discharge by the Texas Department of Criminal Justice or a correctional facility or completed a period of probation ordered by a court and at least two years have elapsed from the date of the receipt or completion; or

(2) been pardoned, had the record of the offense expunged from the person's record, or otherwise been released from the resulting ineligibility to receive a grant under this subchapter.

(c) If a person fails to meet any of the requirements of Subsection (a) after the completion of any semester or term, the person may not receive a [TEXAS] grant under this subchapter [H] during the next semester or term in which the person enrolls. A person may become eligible to receive a [TEXAS] grant under this subchapter [H] in a subsequent semester or term if the person:

(1) completes a semester or term during which the student is not eligible for a scholarship; and

(2) meets all the requirements of Subsection (a).

(d) For the purpose of this section, a person makes satisfactory academic progress toward an associate degree or certificate only if:

(1) in the person's first academic year the person meets the satisfactory academic progress requirements of the institution at which the person is enrolled; and

(2) in a subsequent academic year, the person:

(A) [(H)] completes at least 75 percent of the semester credit hours attempted in the student's most recent academic year; and

(B) has earned [(2) - earns] an overall grade point average of at least 2.5 on a four-point scale or the equivalent on course work previously attempted at institutions of higher education.

(e) A person who is eligible to receive a [TEXAS] grant under this subchapter [H] continues to remain eligible to receive the [TEXAS] grant [H] if the person enrolls in or transfers to another eligible institution.

(f) The coordinating board shall adopt rules to allow a person who is otherwise eligible to receive a grant under this subchapter, in the event of a hardship or for other good cause shown, including a showing of a severe illness or other debilitating condition that may affect the person's academic performance or that the person is

responsible for the care of a sick, injured, or needy person and that the person's provision of care may affect the person's academic performance, to receive a grant under this subchapter:

(1) while enrolled in a number of semester credit hours that is less than the number of semester credit hours required under Subsection (a)(3); or

(2) if the student's grade point average or completion rate falls below the satisfactory academic progress requirements of Subsection (d).

SECTION 43. Section 56.406, Education Code, is amended to read as follows:

Sec. 56.406. GRANT USE. A person receiving a [TEXAS] grant under this subchapter [H] may use the money to pay any usual and customary cost of attendance at an eligible institution incurred by the student. The institution may disburse all or part of the proceeds of a [TEXAS] grant under this subchapter [H] to an eligible person only if the tuition and required fees incurred by the person at the institution have been paid.

SECTION 44. Subsections (a), (b), (c), (f), and (g), Section 56.407, Education Code, are amended to read as follows:

(a) The amount of a [TEXAS] grant under this subchapter [H] for a student enrolled full-time at an eligible institution is the amount determined by the coordinating board as the average statewide amount of tuition and required fees that a resident student enrolled full-time in an associate degree or certificate program would be charged for that semester or term at eligible institutions.

(b) The coordinating board may adopt rules that allow the coordinating board to increase or decrease, in proportion to the number of semester credit hours in which a student is enrolled, the amount of a [TEXAS] grant [H] award under this section to a student who is enrolled in a number of semester credit hours in excess of or below the number of semester credit hours described in Section 56.404(a)(4) or 56.405(a)(3).

(c) The amount of a [TEXAS] grant under this subchapter [H] may not be reduced by any gift aid for which the person receiving the grant is eligible, unless the total amount of a person's grant plus any gift aid received exceeds the total cost of attendance at an eligible institution.

(f) An eligible institution may not:

(1) charge a person attending the institution who also receives a [TEXAS] grant under this subchapter [H] an amount of tuition and required fees in excess of the amount of the [TEXAS] grant under this subchapter [H] received by the person; or

(2) deny admission to or enrollment in the institution based on a person's eligibility to receive a [TEXAS] grant under this subchapter [H] or a person's receipt of a [TEXAS] grant under this subchapter [H].

(g) An institution may use other available sources of financial aid, other than a loan or a Pell grant, to cover any difference in the amount of a [TEXAS] grant under this subchapter [H] and the actual amount of tuition and required fees at the institution.

SECTION 45. Subsection (b), Section 56.463, Education Code, is amended to read as follows:

(b) Money in the Texas B-On-time student loan account may be used only to pay any costs of the coordinating board related to the operation of the Texas B-On-time loan program and as otherwise provided by this subchapter.

SECTION 46. Subsection (b), Section 56.465, Education Code, is amended to read as follows:

(b) The amount of tuition set aside under Subsection (a) shall be deposited to the credit of the Texas B-On-time student loan account established under Section 56.463 or to the interest and sinking fund established by the coordinating board under Section 52.91(b) in accordance with the resolution of the board establishing such fund.

SECTION 47. Section 61.066, Education Code, is amended by adding Subsection (c) to read as follows:

(c) The board shall conduct a biennial study to determine the total cost of attending each institution of higher education and the resources used by students to cover that cost, including the amounts of money received by students at each institution from the major sources of public and private financial aid, including grants, loans, scholarships, gifts, and work-study programs. In conducting the study, the board shall solicit information and comments from the financial aid office at each institution of higher education. Not later than November 1 of each even-numbered year, the board shall report the findings of the study to each legislative standing committee and subcommittee with primary jurisdiction over higher education.

SECTION 48. Section 61.0776, Education Code, is amended by adding Subsection (f) to read as follows:

(f) The board, in cooperation with the entities specified by Subsection (a) and the advisory committee established by Subsection (b), shall develop a comprehensive financial aid training program for public school counselors, employees of student financial aid offices of public and private or independent institutions of higher education, members of appropriate community-based organizations, and other appropriate persons. The board may adopt rules as necessary to administer the training program. The board shall design the training program to:

(1) use the information required by Subsection (e) and any other information necessary to carry out this subdivision:

(A) to inform persons receiving the training concerning:

(i) the opportunities available to students for obtaining financial aid, including eligibility requirements; and

(ii) the procedures for obtaining financial aid; and

(B) to provide sufficient and accessible detail to enable the persons receiving the training to provide timely and consistent answers to the questions of students and their parents, conservators, or guardians concerning the opportunities and procedures;

(2) teach methods to enable the persons receiving the training to effectively communicate financial aid information to students and their parents, conservators, or guardians;

(3) support and promote the dissemination of financial aid information to students and their parents, conservators, or guardians throughout local areas; and

(4) publicize the training and make the training easily available to public school counselors and other appropriate persons throughout this state.

SECTION 49. Subchapter C, Chapter 61, Education Code, is amended by adding Section 61.088 to read as follows:

Sec. 61.088. HIGHER EDUCATION ENROLLMENT ASSISTANCE PROGRAM. (a) To the extent that funds are available for the purpose, the board shall administer the Higher Education Enrollment Assistance Program. Under the program, the board shall:

(1) provide information related to enrollment in public or private or independent institutions of higher education, including admissions and financial aid information, to prospective students in three areas of this state identified by the board as having a significant number of students who graduate from high school and do not attend an institution of higher education; and

(2) assist those prospective students in completing applications related to enrollment in those institutions, including admissions and financial aid applications.

(b) To the extent that funds are available for the purpose, the board shall expand the program to include additional areas identified by the board as meeting the criteria specified by Subsection (a).

(c) The board shall provide the information and assistance required by this section at least twice each year at one or more appropriate locations in each area served by the program.

(d) The board may coordinate with an institution of higher education or other entity to provide the information and assistance required by this section in each area served by the program.

(e) Not later than August 31 of each year, the board shall submit to the legislature a report on the scope and effectiveness of the program.

(f) The board shall adopt rules as necessary to implement this section.

SECTION 50. Subchapter F, Chapter 61, Education Code, is amended by adding Section 61.2251 to read as follows:

Sec. 61.2251. REESTABLISHING ELIGIBILITY FOR GRANT. If a person who receives an initial tuition equalization grant after the 2004-2005 academic year fails to meet any of the applicable requirements of this subchapter after the completion of any semester or term, the person may not receive a tuition equalization grant during the next semester or term in which the person enrolls. The person may become eligible to receive a tuition equalization grant in a subsequent semester or term if the person:

(1) completes a semester or term during which the student is not eligible for a tuition equalization grant; and

(2) meets all the applicable requirements of this subchapter.

SECTION 51. Section 61.227, Education Code, is amended by adding Subsection (e) to read as follows:

(e) Notwithstanding any restrictions provided by Subsection (c) on the amount of a grant, a tuition equalization grant for an academic period for an undergraduate student who establishes exceptional financial need in accordance with the procedures and rules of the coordinating board may be certified by the coordinating board in an amount not to exceed 150 percent of the amount of the grant that the student would otherwise have been awarded for that period under the other provisions of this section.

SECTION 52. Section 431.090, Government Code, is amended by amending Subsection (g) and adding Subsections (h) and (i) to read as follows:

(g) Before each semester at a time determined by the adjutant general [~~Texas Higher Education Coordinating Board~~], the adjutant general shall certify to the appropriate public and private institutions of higher education [~~the coordinating board~~] a list of the persons to whom the adjutant general has awarded tuition assistance under this section for that semester. The amount of tuition assistance awarded by the adjutant general under this section may not exceed the amount of [~~After receipt of the list, the coordinating board shall determine whether sufficient~~] money ~~is~~ available to fund the tuition assistance awards [~~under Section 54.2155, Education Code. If the coordinating board determines that sufficient money is not available, the board shall notify the adjutant general, who shall reduce the number of awards according to the amount of money available and certify to the coordinating board a revised list of the persons to whom the adjutant general has awarded tuition assistance.~~].

(h) From money appropriated for purposes of this section, the adjutant general shall authorize the comptroller to reimburse an institution of higher education in an amount equal to the amount of the tuition exemption the institution grants to a person under Section 54.2155, Education Code.

(i) From money appropriated for purposes of this section, the adjutant general shall authorize the comptroller to make a grant to a person attending a private or independent institution of higher education to whom the adjutant general has awarded tuition assistance for the semester under this section. The amount of a grant under this subsection is an amount equal to the average amount of reimbursement the adjutant general estimates will be paid per student for the same semester under Subsection (h).

SECTION 53. Subsection (b), Section 504.615, Transportation Code, is amended to read as follows:

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the general revenue fund. The money may be used only for:

(1) scholarships to students who demonstrate a need for financial assistance under Texas Higher Education Coordinating Board rule; or

(2) Texas Public Educational Grants awarded under Subchapter C, Chapter 56, Education Code, if the fee is for the issuance of a license plate for a college described by Subsection (e)(1).

SECTION 54. Subchapter G, Chapter 504, Transportation Code, is amended by adding Section 504.657 to read as follows:

Sec. 504.657. HIGHER EDUCATION COORDINATING BOARD LICENSE PLATES. (a) The department shall issue specialty license plates for the Texas Higher Education Coordinating Board. The department shall design the license plates in consultation with the coordinating board.

(b) After deduction of the department's administrative costs, the remainder of the fee shall be deposited to the credit of the "College For Texans" campaign account in the general revenue fund for use only by the Texas Higher Education Coordinating Board for purposes of the campaign.

SECTION 55. Subsections (b) and (h), Section 56.307, Education Code, are repealed.

SECTION 56. Section 51.009, Education Code, as amended by this Act, applies to fees collected on or after the effective date of this Act. A fee collected before that date is governed by the law in effect when the fee is collected, and that law is continued in effect for that purpose.

SECTION 57. The initial term of a student regent appointed for a state university system under Section 51.355, Education Code, as added by this Act, or for a state university under Section 51.356, Education Code, as added by this Act, expires February 1, 2007. The appropriate student governments, the chancellor of each state university system, the president of each state university that is not a part of a university system, and the governor shall take the actions required by Sections 51.355 and 51.356, Education Code, as added by this Act, as soon as practicable after this Act takes effect to select a student regent for each state university or state university system for that initial term.

SECTION 58. (a) The Texas Higher Education Coordinating Board shall study and make recommendations regarding:

(1) the feasibility of implementing an automatic admissions program for undergraduate students who:

(A) earn an associate degree or certificate at a junior college or similar institution; and

(B) apply to transfer to a general academic teaching institution, as defined by Section 61.003, Education Code; and

(2) appropriate academic requirements for eligibility for automatic admission under such a program, such as the completion of courses in the core curriculum, as defined by Section 61.821, Education Code, or achievement of a minimum grade point average.

(b) Not later than October 1, 2006, the Texas Higher Education Coordinating Board shall deliver to each legislative standing committee or subcommittee with jurisdiction over higher education a report containing the results of the study and the related recommendations of the board.

SECTION 59. The Texas Higher Education Coordinating Board shall, as necessary, adopt rules consistent with Sections 52.91, 56.463, and 56.465, Education Code, as amended by this Act, as soon as practicable after this Act takes effect. For that purpose, the coordinating board may adopt the rules in the manner provided by law for emergency rules.

SECTION 60. (a) The Texas Higher Education Coordinating Board shall conduct a study of the tuition exemptions and waivers authorized under Chapter 54, Education Code. The study must include an evaluation of the extent to which the tuition exemptions and waivers:

(1) are a cost-effective and efficient method of providing financial assistance to students when compared to other types of available financial aid;

(2) are consistent with one another in regard to eligibility requirements and application procedures;

(3) are capable of being efficiently or properly administered by public institutions of higher education or other applicable entities;

(4) effectively target students having substantial financial need or effectively accomplish the other purposes of those exemptions or waivers; and

(5) distribute tuition assistance fairly among similarly situated students.

(b) Not later than November 1, 2006, the Texas Higher Education Coordinating Board shall report the results of the study, including the board's recommendations for administrative or statutory changes to address the board's findings, to the governing board of each public institution of higher education and to the presiding officer of each legislative standing committee and subcommittee with primary jurisdiction over higher education.

(c) This section expires January 1, 2007.

SECTION 61. Subsection (f), Section 54.007, and Section 54.0071, Education Code, as added by this Act, apply beginning with the 2006 spring semester.

SECTION 62. (a) The change in law made by this Act to Section 54.214, Education Code, applies to eligibility for an exemption from payment of tuition and fees for an academic period beginning with the 2005 fall semester and applies regardless of whether a person would have been exempt from payment of tuition and fees under Subsection (c), Section 54.214, Education Code, as that subsection existed before the amendment made by this Act. Eligibility for an exemption from payment of tuition and fees for an academic period before the 2005 fall semester is covered by the applicable law in effect before the effective date of this Act, and the former law is continued in effect for that purpose.

(b) The Texas Higher Education Coordinating Board shall, as necessary, adopt rules consistent with Subsection (c), Section 54.214, Education Code, as amended by this Act, as soon as practicable after this Act takes effect. For that purpose, the coordinating board may adopt the rules in the manner provided by law for emergency rules. This subsection expires May 1, 2006.

SECTION 63. The changes in law made by this Act to Section 54.2155, Education Code, and Section 431.090, Government Code, apply beginning with tuition assistance awards for the 2006-2007 academic year. Tuition assistance awards for an academic year before the 2006-2007 academic year are covered by the law in effect immediately preceding the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 64. Sections 56.051 and 56.052, Education Code, as amended by this Act, apply beginning with the 2006 spring semester. The law governing emergency student loans in effect immediately before the effective date of this Act applies to those loans for a semester or term before the 2006 spring semester, and the former law is continued in effect for that purpose.

SECTION 65. The changes in law made by this Act to Section 56.076, Education Code, apply only to an agreement entered into by an institution of higher education and an employer under that section on or after the effective date of this Act.

SECTION 66. As soon as practicable after this Act takes effect, the Texas Higher Education Coordinating Board shall revise rules adopted under Subsection (a), Section 56.209, Education Code, as necessary to conform to changes made by this Act to Subchapter K, Chapter 56, Education Code. For that purpose, the coordinating board may adopt the revisions to those rules in the manner provided by law for emergency rules. This section expires September 1, 2006.

SECTION 67. The Texas Higher Education Coordinating Board shall:

(1) study alternative methods of funding the Toward EXcellence, Access, & Success (TEXAS) grant program created under Subchapter M, Chapter 56, Education Code; and

(2) not later than September 1, 2006, report to the Legislative Oversight Committee on the TEXAS grant program and Teach for Texas grant program concerning the results of the study.

SECTION 68. The change in law made by this Act to Subchapter M, Chapter 56, Education Code, applies beginning with the 2005-2006 academic year, but does not affect the amount of or entitlement to any grant awarded before the effective date of this Act.

SECTION 69. The change in law made by this Act relating to the eligibility of a person to receive a Texas Educational Opportunity Grant applies to each Texas Educational Opportunity Grant awarded on or after the effective date of this Act.

SECTION 70. The Texas Higher Education Coordinating Board shall make the initial report required by Subsection (c), Section 61.066, Education Code, as added by this Act, not later than November 1, 2006.

SECTION 71. The Texas Higher Education Coordinating Board shall implement the comprehensive financial aid training program under Subsection (f), Section 61.0776, Education Code, as added by this Act, not later than January 1, 2006.

SECTION 72. The change in law made by this Act by adding Section 61.2251, Education Code, applies beginning with tuition equalization grants for the 2005-2006 academic year, but only for tuition equalization grants awarded on or after the effective date of this Act. A tuition equalization grant awarded before the effective date of this Act is governed by the law in effect immediately before the effective date, and the former law is continued in effect for that purpose.

SECTION 73. This Act takes effect September 1, 2005.

The Conference Committee Report on **SB 1227** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 712

Senator Carona submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 712** 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
ELTIFE

R. COOK
P. KING

ESTES
FRASER
LUCIO

WEST

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the legislature's goal for energy efficiency and related energy efficiency programs.

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

SECTION 1. Section 39.905, Utilities Code, is amended to read as follows:

Sec. 39.905. GOAL FOR ENERGY EFFICIENCY. (a) It is the goal of the legislature that:

(1) electric utilities will administer energy savings incentive programs in a market-neutral, nondiscriminatory manner but will not offer underlying competitive services;

(2) all customers, in all customer classes, have a choice of and access to energy efficiency alternatives and other choices from the market that allow each customer to reduce energy consumption, peak demand, or ~~[and reduce]~~ energy costs; and

(3) each electric utility will provide, through market-based standard offer programs or limited, targeted, market-transformation programs, incentives sufficient for retail electric providers and competitive energy service providers to acquire additional cost-effective energy efficiency equivalent to at least 10 percent of the electric utility's annual growth in demand.

(b) The commission shall provide oversight and adopt rules and procedures, as necessary, to ensure that the utilities can achieve the goal of this section ~~[is achieved by January 1, 2004]~~.

(c) A standard offer program provided under Subsection (a)(3) must be neutral with respect to technologies, equipment, and fuels, including thermal, chemical, mechanical, and electrical energy storage technologies.

(d) The commission shall adopt the following market-transformation program options that the utilities may choose to implement in order to satisfy the goal in Subsection (a)(3):

(1) energy-smart schools;

(2) appliance retirement and recycling;

(3) air conditioning system tune-ups; and

(4) the use of trees or other landscaping for energy efficiency.

(e) An electric utility may use money approved by the commission for energy efficiency programs to perform necessary research and development to foster continuous improvement and innovation in the application of technology and program design and implementation. Money the utility uses under this subsection may not exceed 10 percent of the amount the commission approved for energy efficiency programs in the utility's most recent full rate proceeding.

(f) Unless funding is provided under Section 39.903, beginning January 1, 2006, each unbundled transmission and distribution utility shall include in its energy efficiency plan a targeted low-income energy efficiency program as described by Section 39.903(f)(2), and the savings achieved by the program shall count toward the transmission and distribution utility's energy efficiency goal. The commission shall determine the appropriate level of funding to be allocated to both targeted and standard offer low-income energy efficiency programs in each unbundled transmission and distribution utility service area. The total expenditures for both targeted and standard offer low-income energy efficiency programs will be based on the amount spent by the transmission and distribution utility on the commission's hard-to-reach program in calendar year 2003. This level of funding for low-income energy efficiency programs shall be provided from money approved by the commission for the transmission and distribution utility's energy efficiency programs. The state agency that administers the federal weatherization assistance program shall provide reports as required by the commission to provide the most current information available on energy and peak demand savings achieved in each transmission and distribution utility service area.

SECTION 2. This Act takes effect September 1, 2005.

The Conference Committee Report on **SB 712** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 805

Senator Averitt submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 805** 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
DUNCAN
ELTIFE
ESTES
WILLIAMS

On the part of the Senate

TAYLOR
B. KEFFER
SEAMAN
THOMPSON

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to certain small and large employer health cooperatives and reinsurance for small employer health benefit plans.

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

SECTION 1. Subchapter B, Chapter 1501, Insurance Code, as effective April 1, 2005, and as amended by the Act of the 79th Legislature, Regular Session, 2005, relating to nonsubstantive additions to and corrections in enacted codes (the general code update bill), is amended by adding Section 1501.0575 to read as follows:

Sec. 1501.0575. VOLUNTARY PARTICIPATION BY ISSUER IN COOPERATIVE. A health benefit plan issuer may elect not to participate in a health group cooperative. The health benefit plan issuer may elect to participate in one or more health group cooperatives and may select the cooperatives in which the issuer will participate.

SECTION 2. Section 1501.0581, Insurance Code, as added by the Act of the 79th Legislature, Regular Session, 2005, relating to nonsubstantive additions to and corrections in enacted codes (the general code update bill), is amended by amending Subsections (a), (b), and (c) and adding Subsections (o) and (p) to read as follows:

(a) The membership of a health group cooperative may consist only of small employers or may consist only of large employers, but may not~~consist only of large employers, but may not~~~~at the option of the health group cooperative,~~ consist of both small and large employers. To participate as a member of a health group cooperative, an employer must be a small or large employer as described by this chapter.

(b) Subject to the requirements imposed on small employer health benefit plan issuers under Section 1501.101, a health group cooperative:

(1) shall allow a small employer to join a a ~~the~~ health group cooperative consisting only of small employers and enroll in health benefit plan coverage, subject to Subsection (o); and

(2) may allow a large employer to join a a ~~the~~ health group cooperative consisting only of large employers and enroll in health benefit plan coverage.

(c) Subject to Subsection (o), a ~~A~~ health group cooperative consisting only of small employers shall allow any small employer to join the health group cooperative and enroll in the cooperative's health benefit plan coverage during the initial enrollment and annual open enrollment periods.

(o) A health group cooperative consisting only of small employers is not required to allow a small employer to join the health group cooperative under Subsection (c) if:

(1) the cooperative has elected to restrict membership in the cooperative in accordance with this subsection and Subsection (p); and

(2) after the small employer has joined the cooperative, the total number of eligible employees employed on business days during the preceding calendar year by all small employers participating in the cooperative would exceed 50.

(p) A health group cooperative must make the election described by Subsection (o) at the time the cooperative is initially formed. Evidence of the election must be filed in writing with the commissioner in the form and at the time prescribed by the commissioner by rule.

SECTION 3. Section 1501.063, Insurance Code, as effective April 1, 2005, and as amended by the Act of the 79th Legislature, Regular Session, 2005, relating to nonsubstantive additions to and corrections in enacted codes (the general code update bill), is amended by amending Subsection (b) and adding Subsections (b-1), (b-2), and (b-3) to read as follows:

(b) A health group cooperative [~~that is composed only of small employers~~] is considered a single employer under this code.

(b-1) A health group cooperative that is composed only of small employers and that has made the election described by Section 1501.0581(o)(1) in accordance with Subsection (p) of that section [and] shall be treated in the same manner as a small employer for the purposes of this chapter, including for the purposes of any provision relating to premium rates and issuance and renewal of coverage.

(b-2) A health group cooperative that is composed only of small [and large] employers and that has not made the election described by Section 1501.0581(o)(1) in accordance with Subsection (p) of that section, or a health group cooperative that is composed only of large employers, shall be treated in the same manner as a large employer for the purposes of this chapter, including for the purposes of any provision relating to premium rates and issuance and renewal of coverage.

(b-3) [is considered a single employer under this code and, in relation to the small employers that are members of the cooperative, shall be treated in the same manner as a small employer. A health group cooperative that is composed of small and large employers may elect to extend the protections of this chapter that are applicable to small employer groups to the large employer groups that participate in the cooperative.] A health group cooperative shall have sole authority to make benefit elections and perform other administrative functions under this code for the cooperative's participating employers.

SECTION 4. Subchapter G, Chapter 1501, Insurance Code, is amended by adding Section 1501.3241 to read as follows:

Sec. 1501.3241. TEMPORARY LIMIT ON TOTAL ASSESSMENTS. Notwithstanding Section 1501.324, the maximum assessment amount payable for a calendar year may not exceed 10 percent of the total premiums earned in the preceding calendar year from small employer health benefit plans delivered or issued for delivery by reinsured health benefit plan issuers in this state. This section expires September 1, 2007.

SECTION 5. Section 1501.325, Insurance Code, is amended by amending Subsections (d) and (e) and adding Subsections (d-1) and (e-1) to read as follows:

(d) A reinsured health benefit plan issuer may not cede additional eligible lives to the system [~~write small employer health benefit plans on a guaranteed issue basis~~] during a calendar year if the assessment amount payable for the preceding calendar year is at least five percent of the total premiums earned in that calendar year from small employer health benefit plans delivered or issued for delivery by reinsured health benefit plan issuers in this state.

(d-1) During the period that this subsection is effective, Subsection (d) is not effective. A reinsured health benefit plan issuer may not cede additional eligible lives to the system during a calendar year if the assessment amount payable for the preceding calendar year is at least 10 percent of the total premiums earned in that

calendar year from small employer health benefit plans delivered or issued for delivery by reinsured health benefit plan issuers in this state. This subsection expires September 1, 2007.

(e) A reinsured health benefit plan issuer may not cede additional eligible lives to the system ~~[write small employer health benefit plans on a guaranteed issue basis]~~ after the board determines that the expected loss from the reinsurance system for a year will exceed the total amount of assessments payable at a rate of five percent of the total premiums earned for the preceding calendar year. A reinsured health benefit plan issuer may not resume ceding additional eligible lives to the system ~~[writing small employer health benefit plans on a guaranteed issue basis]~~ until the board determines that the expected loss will be less than the maximum established by this subsection.

(e-1) During the period that this subsection is effective, Subsection (e) is not effective. A reinsured health benefit plan issuer may not cede additional eligible lives to the system after the board determines that the expected loss from the reinsurance system for a year will exceed the total amount of assessments payable at a rate of 10 percent of the total premiums earned for the preceding calendar year. A reinsured health benefit plan issuer may not resume ceding additional eligible lives to the system until the board determines that the expected loss will be less than the maximum established by this subsection. This subsection expires September 1, 2007.

SECTION 6. Notwithstanding Subsection (p), Section 1501.0581, Insurance Code, as added by this Act, a health group cooperative in existence on the effective date of this Act may make the election described by Subsection (o), Section 1501.0581, Insurance Code, as added by this Act, not later than December 31, 2005.

SECTION 7. Not later than January 1, 2006, the commissioner of insurance shall adopt rules under Section 1501.010, Insurance Code, as necessary to implement the change in law made by this Act.

SECTION 8. This Act takes effect only if S.B. No. 979 or H.B. No. 2018 or another Act of the 79th Legislature, Regular Session, 2005, relating to nonsubstantive additions to and corrections in enacted codes becomes law. If S.B. No. 979 or H.B. No. 2018 or another Act of the 79th Legislature, Regular Session, 2005, relating to nonsubstantive additions to and corrections in enacted codes does not become law, this Act has no effect.

SECTION 9. To the extent of any conflict, this Act prevails over another Act of the 79th Legislature, Regular Session, 2005, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 10. This Act takes effect September 1, 2005.

The Conference Committee Report on **SB 805** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 809

Senator Averitt submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 809** 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
DUNCAN
WILLIAMS

TAYLOR
B. KEFFER
SEAMAN
THOMPSON

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the Texas Health Insurance Risk Pool.

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

SECTION 1. Subsection (b), Section 1506.002, Insurance Code, is amended to read as follows:

(b) In this chapter, "health benefit plan" does not include:

- (1) accident insurance;
- (2) a plan providing coverage only for dental or vision care;
- (3) fixed indemnity insurance, including hospital indemnity insurance;
- (4) ~~(2)~~ credit insurance;
- (5) ~~(3)~~ long-term care insurance;
- (6) ~~(4)~~ disability income insurance;
- (7) other limited benefit coverage, including specified disease coverage;
- (8) ~~(5)~~ coverage issued as a supplement to liability insurance;
- (9) ~~(6)~~ insurance arising out of a workers' compensation law or similar

law;

(10) ~~(7)~~ automobile medical payment insurance; or

(11) ~~(8)~~ insurance coverage under which benefits are payable with or without regard to fault and that is statutorily required to be contained in a liability insurance policy or equivalent self-insurance.

SECTION 2. Subsection (a), Section 1506.109, Insurance Code, is amended to read as follows:

(a) The pool shall ~~may~~ provide for and use cost containment measures and requirements to make the coverage offered by the pool more cost-effective. To the extent the board determines it is cost-effective, the cost containment measures must include individual case management and disease management. The cost containment measures may include~~[-, including]~~ preadmission screening, the requirement of a second surgical opinion, and concurrent utilization review subject to Article 21.58A ~~[-, and individual case management, to make the coverage offered by the pool more cost effective]~~.

SECTION 3. Subsection (a), Section 1506.152, Insurance Code, is amended to read as follows:

(a) An individual who is a legally domiciled resident of this state is eligible for coverage from the pool if the individual:

(1) provides to the pool evidence that the individual maintained health benefit plan coverage for the preceding 18 months with no gap in coverage longer than 63 days and with the most recent coverage being provided through an employer-sponsored plan, church plan, or government plan;

(2) provides to the pool evidence that the individual maintained health benefit plan coverage under another state's qualified Health Insurance Portability and Accountability Act health program that was terminated because the individual did not reside in that state and submits an application for pool coverage not later than the 63rd day after the date the coverage described by this subdivision was terminated;

(3) has been a legally domiciled resident of this state for the preceding 30 days, is a citizen of the United States or has been a permanent resident of the United States for at least three continuous years, and provides to the pool:

(A) a notice of rejection of, or refusal to issue, substantially similar individual health benefit plan coverage from a health benefit plan issuer, other than an insurer that offers only stop-loss, excess loss, or reinsurance coverage, if the rejection or refusal was for health reasons;

(B) certification from an agent or salaried representative of a health benefit plan issuer that states that the agent or salaried representative cannot obtain substantially similar individual coverage for the individual from any health benefit plan issuer that the agent or salaried representative represents because, under the underwriting guidelines of the health benefit plan issuer, the individual will be denied coverage as a result of a medical condition of the individual;

(C) an offer to issue substantially similar individual coverage only with conditional riders;

~~(D) [a notice of refusal by a health benefit plan issuer to issue substantially similar individual coverage except at a rate exceeding the pool rate; or~~

~~[(E)] a diagnosis of the individual with one of the medical or health conditions on the list adopted under Section 1506.154; or~~

(E) evidence that the individual is covered by substantially similar individual coverage that excludes one or more conditions by rider; or

(4) provides to the pool evidence that, on the date of application to the pool, the individual is certified as eligible for trade adjustment assistance or for pension benefit guaranty corporation assistance, as provided by the Trade Adjustment Assistance Reform Act of 2002 (Pub. L. No. 107-210).

SECTION 4. Section 1506.153, Insurance Code, is amended to read as follows:

Sec. 1506.153. INELIGIBILITY FOR COVERAGE. Notwithstanding Section 1506.152, an individual is not eligible for coverage from the pool if:

(1) on the date pool coverage is to take effect, the individual has health benefit plan coverage from a health benefit plan issuer or health benefit arrangement in effect, except as provided by Section 1506.152(a)(3)(E);

(2) at the time the individual applies to the pool, the individual is eligible for other health care benefits, including benefits from the continuation of coverage under Title X, Consolidated Omnibus Budget Reconciliation Act of 1985 (29 U.S.C. Section 1161 et seq.), as amended (COBRA), other than:

(A) coverage, including COBRA or other continuation coverage or conversion coverage, maintained for any preexisting condition waiting period under a pool policy;

(B) employer group coverage conditioned by a limitation of the kind described by Section 1506.152(a)(3)(A) or (C); or

(C) individual coverage conditioned by a limitation described by Section 1506.152(a)(3)(C) or (D);

(3) within 12 months before the date the individual applies to the pool, the individual terminated coverage in the pool, unless the individual demonstrates a good faith reason for the termination;

(4) the individual is confined in a county jail or imprisoned in a state prison;

(5) any of the individual's premiums are paid for or reimbursed under a government-sponsored program or by a government agency or health care provider, other than as an otherwise qualifying full-time employee of a government agency or health care provider or as a dependent of such an employee;

(6) the individual's prior coverage with the pool was terminated:

(A) during the 12-month period preceding the date of application for nonpayment of premiums; or

(B) for fraud; or

(7) the individual is eligible for health benefit plan coverage provided in connection with a policy, plan, or program paid for or sponsored by an employer, even though the employer coverage is declined.

SECTION 5. Subsection (a), Section 1506.155, Insurance Code, is amended to read as follows:

(a) Except as provided by this section and Section 1506.056, pool coverage excludes charges or expenses incurred before the first anniversary of the effective date of coverage with regard to any condition for which:

(1) the existence of symptoms would cause an ordinarily prudent person to seek diagnosis, care, or treatment within the six-month period preceding the effective date of coverage; or

(2) medical advice, care, or treatment was recommended or received during the six-month period preceding the effective date of coverage.

SECTION 6. Section 1506.156, Insurance Code, is amended to read as follows:

Sec. 1506.156. **BENEFIT REDUCTION; CERTAIN COVERAGES SECONDARY.** (a) The pool shall reduce benefits otherwise payable under pool coverage by:

(1) the total amount paid or payable through any other health benefit plan or health benefit arrangement; and

(2) the total amount of hospital or medical expense benefits paid or payable under:

(A) workers' compensation coverage;

(B) automobile insurance, regardless of whether provided on the basis of fault or no fault; or

(C) a state or federal law or program.

(b) Pool coverage provided under Section 1506.152(a)(3)(E) is secondary to the individual coverage described by that paragraph for any period during which that individual coverage is in effect.

SECTION 7. Subchapter F, Chapter 1506, Insurance Code, is amended by adding Section 1506.2522 to read as follows:

Sec. 1506.2522. ANNUAL REPORT TO BOARD: ENROLLED INDIVIDUALS. (a) Each health benefit plan issuer shall report to the board the number of residents of this state enrolled, as of December 31 of the previous year, in the issuer's health benefit plans providing coverage for residents in this state, as:

(1) an employee under a group health benefit plan; or

(2) an individual policyholder or subscriber.

(b) In determining the number of individuals to report under Subsection (a)(1), the health benefit plan issuer shall include each employee for whom a premium is paid and coverage is provided under an excess loss, stop-loss, or reinsurance policy issued by the issuer to an employer or group health benefit plan providing coverage for employees in this state. A health benefit plan issuer providing excess loss insurance, stop-loss insurance, or reinsurance, as described by this subsection, for a primary health benefit plan issuer may not report individuals reported by the primary health benefit plan issuer.

(c) Ten employees covered by a health plan issuer under a policy of excess loss insurance, stop-loss insurance, or reinsurance count as one employee for purposes of determining that health plan issuer's assessment.

(d) In determining the number of individuals to report under this section, the health benefit plan issuer shall exclude:

(1) the dependents of the employee or an individual policyholder or subscriber; and

(2) individuals who are covered by the health benefit plan issuer under a Medicare supplement benefit plan subject to Chapter 1652.

(e) In determining the number of enrolled individuals to report under this section, the health benefit plan issuer shall exclude individuals who are retired employees who are 65 years of age or older.

SECTION 8. Section 1506.253, Insurance Code, is amended to read as follows:

Sec. 1506.253. ASSESSMENTS TO COVER NET LOSSES. (a) The board shall recover any net loss of the pool by assessing each health benefit plan issuer an amount determined annually by the board based on information in annual statements, the health benefit plan issuer's annual report to the board under Sections [Section] 1506.2521 and 1506.2522, and any other reports required by and filed with the board.

(b) To compute the [The] amount of a health benefit plan issuer's assessment, if any, the board shall:

(1) divide the total amount to be assessed by the total number of enrolled individuals reported by all health benefit plan issuers under Section 1506.2522 as of the preceding December 31 to determine the per capita amount; and

(2) multiply the number of enrolled individuals reported by the health benefit plan issuer under Section 1506.2522 as of the preceding December 31 by the per capita amount to determine the amount assessed to that health benefit plan issuer
~~[is computed by multiplying the total amount required to be assessed against all health benefit plan issuers by a number computed by dividing:~~

~~[(1) the gross premiums collected by the issuer for health benefit plans in this state during the preceding calendar year; by~~

~~[(2) the gross premiums collected by all issuers for health benefit plans in this state during the preceding calendar year].~~

(c) A ~~[For purposes of the assessment under this subchapter, gross health benefit plan premiums do not include premiums collected for:~~

~~[(1) coverage under a Medicare supplement benefit plan subject to Chapter 1652;~~

~~[(2) coverage under a] small employer health benefit plan subject to Subchapters A-H, Chapter 1501, is not subject to an assessment under this subchapter[; or~~

~~[(3) coverage or insurance listed in Section 1506.002(b)].~~

SECTION 9. Chapter 1506, Insurance Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. SUBROGATION RIGHTS OF POOL

Sec. 1506.301. SUBROGATION TO RIGHTS AGAINST THIRD PARTY. The pool:

(1) is subrogated to the rights of an individual covered by the pool to recover against a third party costs for an injury or illness for which the third party is liable under contract, tort law, or other law that have been paid by the pool on behalf of the covered individual; and

(2) may enforce that liability on behalf of the individual.

Sec. 1506.302. BENEFITS NOT PAYABLE; ADVANCE OF BENEFITS AUTHORIZED. (a) Under coverage provided by the pool, benefits are not payable for an injury or illness for which a third party may be liable under contract, tort law, or other law.

(b) Notwithstanding Subsection (a), the pool may advance to a covered individual the benefits provided under the pool coverage for medical expenses resulting from the injury or illness, subject to the pool's right to subrogation and reimbursement under this subchapter.

Sec. 1506.303. REIMBURSEMENT OF POOL REQUIRED. (a) Subject to Section 1506.305, the amount recovered by a covered individual in an action against a third party who is liable for the injury or illness must be used to reimburse the pool for benefits for medical expenses that have been advanced under Section 1506.302.

(b) The amount of reimbursement required by this section is not reduced by the application of the doctrine established at common law relating to adequate compensation of insureds and commonly referred to as the "made whole" doctrine.

(c) Subject to Section 1506.305, the pool shall treat any amount recovered by a covered individual in an action against a third party who is liable for the injury or illness that exceeds the amount of the reimbursement required under this section as an advance against future medical benefits for the injury or illness that the individual would otherwise be entitled to receive under pool coverage.

Sec. 1506.304. RESUMPTION OF PAYMENT OF BENEFITS. If the amount treated as an advance under Section 1506.303(c) is adequate to cover all future medical costs for the covered individual's injury or illness, the pool is not required to resume the payment of benefits. If the advance is insufficient, the pool shall resume the payment of benefits when the advance is exhausted.

Sec. 1506.305. ATTORNEY'S FEE FOR REPRESENTATION OF POOL'S INTEREST. (a) For purposes of this section, the pool's recovery includes:

(1) the amount recovered by the pool in the action; and

(2) the amount of the covered individual's total recovery that must be used to reimburse the pool or that is treated as an advance for future medical costs under Section 1506.303(c).

(b) If the pool's interest is not actively represented by an attorney in a third-party action under this subchapter, the pool shall pay a fee to an attorney representing the claimant in the amount agreed on between the attorney and the pool. In the absence of an agreement, the court shall award to the attorney payable out of the pool's recovery:

(1) a reasonable fee for recovery of the pool's interest that may not exceed one-third of the pool's recovery; and

(2) a proportionate share of the reasonable expenses incurred.

(c) An attorney who represents a covered individual and is also to represent the interests of the pool under this subchapter must make a full written disclosure to the covered individual before employment as an attorney by the pool. The covered individual must acknowledge the disclosure and consent to the representation. A signed copy of the disclosure shall be provided to the covered individual and the pool. A copy of the disclosure with the covered individual's consent must be filed with the pleading before a judgment is entered and approved by the court. The attorney may not receive a fee under this section to which the attorney is otherwise entitled under an agreement with the pool unless the attorney complies with the requirements of this subsection.

(d) If an attorney actively representing the pool's interest actively participates in obtaining a recovery, the court shall award and apportion between the covered individual's and the pool's attorneys a fee payable out of the pool's subrogation recovery. In apportioning the award, the court shall consider the benefit accruing to the pool as a result of each attorney's service. The total attorney's fees may not exceed one-third of the pool's recovery.

SECTION 10. (a) The legislature shall establish a joint interim committee to study the deficit resulting from the net losses of the Texas Health Insurance Risk Pool and to recommend a method or formula for recouping any deficit that apportions the cost of those losses among the largest possible number of users of the health care system.

(b) Not later than September 1, 2006, the committee shall report its findings and recommendations to the governor, lieutenant governor, and speaker of the house of representatives.

(c) The lieutenant governor and speaker of the house of representatives shall determine the composition of the committee.

(d) This section expires September 1, 2007.

SECTION 11. (a) This Act applies only to an application for initial or renewal coverage through the Texas Health Insurance Risk Pool under Chapter 1506, Insurance Code, as amended by this Act, that is filed with that pool 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 on which the application was filed, and the former law is continued in effect for that purpose.

(b) Section 1506.155, Insurance Code, as amended by this Act, and Subchapter G, Chapter 1506, Insurance Code, as added by this Act, apply only to pool coverage that is delivered, issued for delivery, or renewed on or after the effective date of this Act. Pool coverage that is delivered, issued for delivery, or renewed before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

(c) The change in law made by this Act to Subsection (b), Section 1506.002, Insurance Code, applies to an assessment under Subchapter F, Chapter 1506, Insurance Code, for a calendar year beginning on or after the effective date of this Act. An assessment for a net loss for a calendar year before the effective date of this Act is governed by the law in effect during the calendar year for which the assessment is made, and the former law is continued in effect for that purpose.

(d) The board of directors of the Texas Health Insurance Risk Pool shall refund an assessment amount paid for a period after September 30, 2005, that is attributable to those coverages that are exempt from the assessment because of the change in law made by this Act to Subsection (b), Section 1506.002, Insurance Code, at the time the final net loss for the period for which the assessment is made is determined.

(e) Section 1506.253, Insurance Code, as amended by this Act, applies to an assessment under Subchapter F, Chapter 1506, Insurance Code, for a calendar year beginning on or after January 1, 2006. An assessment for a calendar year before January 1, 2006, is governed by the law in effect during the period for which the assessment is made, and the former law is continued in effect for that purpose.

(f) Notwithstanding Subsection (a) of this section and Section 1506.158, Insurance Code, an individual who is covered by the Texas Health Insurance Risk Pool on the effective date of this Act and who, because of the change in law made by this Act to Subsection (a), Section 1506.152, Insurance Code, would no longer be eligible for coverage, continues to be eligible for coverage from the pool until the individual's coverage is terminated for a reason other than that change in law.

SECTION 12. (a) In accordance with Subsection (c), Section 311.031, Government Code, which gives effect to a substantive amendment enacted by the same legislature that codifies the amended statute, the text of Subsection (b), Section 1506.002, Insurance Code, as set out in Section 1 of this Act, Subsection (a), Section 1506.152, Insurance Code, as set out in Section 3 of this Act, and Subsections (a) and

(c), Section 1506.253, Insurance Code, as set out in Section 8 of this Act, gives effect to changes made by Sections 1, 6, and 11, Chapter 840, Acts of the 78th Legislature, Regular Session, 2003.

(b) To the extent of any conflict, this Act prevails over another Act of the 79th Legislature, Regular Session, 2005, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 13. This Act takes effect January 1, 2006.

The Conference Committee Report on **SB 809** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1068

Senator Hinojosa submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1068** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HINOJOSA
ELTIFE
HARRIS
SELIGER
WHITMIRE

On the part of the Senate

DRIVER
CORTE
MADDEN
MCCALL

On the part of the House

The Conference Committee Report on **HB 1068** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 882

Senator Lucio submitted the following Conference Committee Report:

Austin, Texas
May 27, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 882** 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
NELSON
SHAPIRO
SHAPLEIGH
WEST

NAISHTAT
J. DAVIS
HUPP
REYNA

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to autism and pervasive developmental disorders and the Texas Council on Autism and Pervasive Developmental Disorders.

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

SECTION 1. The heading to Chapter 114, Human Resources Code, is amended to read as follows:

CHAPTER 114. TEXAS ~~[INTERAGENCY]~~ COUNCIL ON AUTISM AND
PERVERSIVE DEVELOPMENTAL DISORDERS

SECTION 2. Section 114.001, Human Resources Code, is amended to read as follows:

Sec. 114.001. SHORT TITLE. This chapter may be cited as the Texas ~~[Interagency]~~ Council on Autism and Pervasive Developmental Disorders Act of 1987.

SECTION 3. Section 114.002, Human Resources Code, is amended to read as follows:

Sec. 114.002. DEFINITIONS. In this chapter:

(1) "Autism and other pervasive developmental disorders" means a subclass of mental disorders characterized by distortions in the development of multiple basic psychological functions that are involved in the development of social skills and language, as defined by the Diagnostic and Statistical Manual, 4th ~~[3rd]~~ Edition.

(2) "Council" means the Texas ~~[Interagency]~~ Council on Autism and Pervasive Developmental Disorders.

SECTION 4. The heading to Section 114.003, Human Resources Code, is amended to read as follows:

Sec. 114.003. ~~[INTERAGENCY]~~ COUNCIL.

SECTION 5. Subsections (a), (b), and (d), Section 114.003, Human Resources Code, are amended to read as follows:

(a) The Texas ~~[Interagency]~~ Council on Autism and Pervasive Developmental Disorders is established.

(b) The council is composed of:

(1) seven public members, the majority of whom are family members of a person with autism or a pervasive developmental disorder, appointed by the governor with the advice and consent of the senate; and

(2) one representative from each of the following state agencies, to serve as ex officio members:

(A) ~~[Texas]~~ Department of Aging and Disability Services ~~[Mental Health and Mental Retardation]~~;

(B) ~~[Texas]~~ Department of State Health Services;

(C) Health and ~~[Texas Department of]~~ Human Services Commission;

(D) Texas Education Agency;

(E) Department of Assistive and Rehabilitative Services ~~[Texas Rehabilitation Commission]~~; and

(F) Department of Family and Protective Services ~~[Interagency Council on Early Childhood Intervention]~~.

(d) The public members appointed by the governor serve staggered two-year terms with the terms of three or four members expiring ~~[that expire]~~ on February 1 of each ~~[odd-numbered]~~ year. The public members may be reappointed. A representative of a state agency serves at the pleasure of the commissioner or executive head of that agency. A public member is entitled to reimbursement of the travel expenses incurred by the public member while conducting the business of the council, as provided in the General Appropriations Act.

SECTION 6. Section 114.004, Human Resources Code, is amended to read as follows:

Sec. 114.004. STAFF SUPPORT. The agencies represented on the council shall provide staff support to the council from among the agency staff who are responsible for coordinating services to persons with autism or other pervasive developmental disorders or to those persons' families. The council may require the employment of staff to carry out the responsibilities of the council ~~[perform clerical duties]~~. The executive commissioner of the Health and ~~[Texas Department of]~~ Human Services Commission shall determine which agency must employ ~~[clerical]~~ staff for the council and what funding resources shall be used for the council.

SECTION 7. Section 114.005, Human Resources Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The chair of the council ~~[task force]~~ shall appoint the chair of the task force, ~~[elect its own chairperson]~~ and the task force shall meet and serve in accordance with council rules. The council may divide the task force into regional committees to assist the council in community level program planning and implementation.

(c) A member of the task force may be appointed or removed without cause by a majority vote of the public members of the council present at a council meeting.

SECTION 8. Subsections (a), (b), and (c), Section 114.007, Human Resources Code, are amended to read as follows:

(a) The council shall provide recommendations to the Health and Human Services Commission and other appropriate state agencies ~~[Texas Department of Mental Health and Mental Retardation as the state agency primarily]~~ responsible for implementing this chapter, including recommendations relating to the use of funds

appropriated to the commission or another health and human services agency [department] to provide services to persons with autism or other pervasive developmental disorders.

(b) The council with the advice of the advisory task force and input from people with autism and other pervasive developmental disorders, their families, and related advocacy organizations shall address contemporary issues affecting services available to persons with autism or other pervasive developmental disorders in this state, including:

- (1) successful intervention and treatment strategies, including transitioning;
- (2) personnel preparation and continuing education;
- (3) referral, screening, and evaluation services;
- (4) day care, respite care, or residential care services;
- (5) vocational and adult training programs;
- (6) public awareness strategies;
- (7) contemporary research;
- (8) early identification strategies;
- (9) family counseling and case management; and
- (10) recommendations for monitoring autism service programs.

(c) The council with the advice of the advisory task force and input from people with autism and other pervasive developmental disorders, their families, and related advocacy organizations shall advise the legislature on legislation that is needed to develop further and to maintain a statewide system of quality intervention and treatment services for all persons with autism or other pervasive developmental disorders. The council may develop and recommend legislation to the legislature or comment on pending legislation that affects those persons.

SECTION 9. Section 114.008, Human Resources Code, is amended to read as follows:

Sec. 114.008. REPORT. (a) The agencies represented on the council and the public members shall report to the council any requirements identified by the agency or person to provide additional or improved services to persons with autism or other pervasive developmental disorders. Not later than November 1 of each year, the council shall prepare and deliver to the executive commissioner of the Health and Human Services Commission, the governor, the lieutenant governor, and the speaker of the house of representatives a report summarizing the recommendations.

(b) The council shall develop a strategy for establishing new programs to meet the requirements identified through the council's review and assessment and from input from the task force, people with autism and related pervasive developmental disorders, their families, and related advocacy organizations ~~[by the agencies and the public members]~~.

SECTION 10. Section 114.010, Human Resources Code, is amended by adding Subsection (d) to read as follows:

(d) Funds may be appropriated from available resources to allow the council to provide recommendations to the Health and Human Services Commission and other appropriate state agencies responsible for implementing this chapter, including

recommendations relating to the use of funds appropriated to the commission or another health and human services agency to provide services to persons with autism or other pervasive developmental disorders.

SECTION 11. Subsection (c), Section 114.011, Human Resources Code, is amended to read as follows:

(c) The council shall develop with the Health and Human Services Commission and any agency designated by the commission [~~Texas Department of Mental Health and Mental Retardation~~] procedures for allocating available funds to programs approved under this section.

SECTION 12. Section 29.005, Education Code, is amended by adding Subsection (e) to read as follows:

(e) The commissioner by rule may require a school district to include in the individualized education program of a student with autism or another pervasive developmental disorder any information or requirement determined necessary to ensure the student receives a free appropriate public education as required under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

SECTION 13. Subchapter A, Chapter 29, Education Code, is amended by adding Section 29.0051 to read as follows:

Sec. 29.0051. STUDY OF RULE CONCERNING CONTENT OF INDIVIDUALIZED EDUCATION PROGRAM FOR STUDENT WITH PERVASIVE DEVELOPMENTAL DISORDER. (a) The agency shall establish a committee composed of parents of students with autism or other pervasive developmental disorders, teachers, school administrators, and other interested persons to study the rule concerning the content of an individualized education program for a student with autism or another pervasive developmental disorder (19 T.A.C. Section 89.1055(e)). School district employees or educational consultants or contractors who receive or are employed by entities that receive compensation from a school district may not constitute more than 50 percent of the committee.

(b) In studying the rule, the committee shall consider whether any other considerations, such as applied behavior analysis, communication training, or the use of inclusive settings, should be included in the rule.

(c) Not later than July 1, 2006, the committee shall recommend to the commissioner any necessary changes to the rule.

(d) This section expires August 1, 2006.

SECTION 14. (a) Notwithstanding Subsection (d), Section 114.003, Human Resources Code, as amended by this Act, a public member of the Texas Council on Autism and Pervasive Developmental Disorders serving a term that is scheduled to expire February 1, 2007, under Subsection (d), Section 114.003, Human Resources Code, as it existed immediately before the effective date of this Act, may continue to serve the remainder of the public member's term until February 1, 2007.

(b) The governor shall appoint seven public members to the Texas Council on Autism and Pervasive Developmental Disorders for terms beginning February 1, 2007. The governor shall appoint three persons to a term expiring February 1, 2008, and four persons to a term expiring February 1, 2009.

SECTION 15. This Act takes effect September 1, 2005.

The Conference Committee Report on **SB 882** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 408**

Senator Nelson submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 408** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

NELSON
CARONA
FRASER
VAN DE PUTTE
WHITMIRE

On the part of the Senate

P. KING
CRABB
HUNTER

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and functions of the Public Utility Commission of Texas; providing a penalty.

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

SECTION 1. Section 12.005, Utilities Code, is amended to read as follows:

Sec. 12.005. APPLICATION OF SUNSET ACT. The Public Utility Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter or by Chapter 39, the commission is abolished and this title expires September 1, 2011 ~~[2005]~~.

SECTION 2. Section 12.059, Utilities Code, is amended by adding Subsection (c) to read as follows:

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

SECTION 3. Section 12.102, Utilities Code, is amended to read as follows:

Sec. 12.102. DUTIES OF EMPLOYEES. The commission shall develop and implement policies that clearly separate ~~[define]~~ the policymaking ~~[respective]~~ responsibilities of the commission and the management responsibilities of the commission employees.

SECTION 4. Section 12.153, Utilities Code, is amended to read as follows:

Sec. 12.153. RELATIONSHIP WITH TRADE ASSOCIATION. A person may not serve as a commissioner or be a commission employee who is employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), [exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule] if the person is:

- (1) an officer, employee, or paid consultant of a trade association; or
- (2) the spouse of an officer, manager, or paid consultant of a trade association.

SECTION 5. Subchapter A, Chapter 14, Utilities Code, is amended by adding Section 14.0025 to read as follows:

Sec. 14.0025. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

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

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

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

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

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

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

SECTION 6. Subchapter B, Chapter 14, Utilities Code, is amended by adding Section 14.059 to read as follows:

Sec. 14.059. TECHNOLOGY POLICY. The commission shall implement a policy requiring the commission to use appropriate technological solutions to improve the commission's ability to perform its functions. The policy must ensure that the public is able to interact with the commission on the Internet.

SECTION 7. Section 15.023, Utilities Code, is amended by amending Subsections (b) and (c) and adding Subsection (d) to read as follows:

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

(c) The commission by rule shall establish a classification system for violations that includes a range [The amount] of [an] administrative penalties that may be assessed for each class of violation [penalty shall be] based on:

- (1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of a prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

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

SECTION 8. Subsection (b), Section 15.051, Utilities Code, is amended to read as follows:

(b) The commission shall keep for a reasonable period information about each complaint filed with the commission that the commission has authority to resolve. The information shall include:

(1) the date the complaint is received;

(2) the name of the complainant;

(3) the subject matter of the complaint;

(4) a record of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint;

and

(6) if the commission took no action on the complaint, an explanation of the reason the complaint was closed without action.

SECTION 9. Section 39.151, Utilities Code, is amended by amending Subsections (b) through (e), (g), and (h) and adding Subsections (d-1) and (g-1) to read as follows:

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

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

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

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

(d-1) The commission may:

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

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

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

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

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

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

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

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

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

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

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

(A) one representing independent generators;

(B) one representing investor-owned utilities;

(C) one representing power marketers;

(D) one representing retail electric providers;

(E) one representing municipally owned utilities; and

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

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

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

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

[(A) one representative of residential customers;

[(B) one representative of commercial customers; and

[(C) one representative of industrial customers.

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

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

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

SECTION 10. Subchapter D, Chapter 39, Utilities Code, is amended by adding Sections 39.1511, 39.1512, and 39.1515 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 11. Subsection (e), Section 39.903, Utilities Code, as amended by Chapters 1394, 1451, and 1466, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(e) Money in the system benefit fund may be appropriated to provide funding solely for the following regulatory purposes, ~~and~~ in the following order of priority:

(1) programs to:

(A) assist low-income electric customers by providing the 10 percent reduced rate prescribed by Subsection (h); and

(B) provide one-time bill payment assistance to electric customers who are or who have in their households one or more seriously ill or disabled low-income persons and who have been threatened with disconnection for nonpayment;

(2) customer education programs, administrative expenses incurred by the commission in implementing and administering this chapter, and expenses incurred by the office under this chapter;

(3) programs to assist low-income electric customers by providing the targeted energy efficiency programs described by Subsection (f)(2);

(4) the school funding loss mechanism provided by Section 39.901;

(5) programs to assist low-income electric customers by providing the 20 percent reduced rate prescribed by Subsection (h); and

(6) reimbursement to the commission and the Health and Human Services Commission [~~Texas Department of Human Services~~] for expenses incurred in the implementation and administration of an integrated eligibility process created under Section 17.007 for customer service discounts relating to retail electric service, including outreach expenses the commission determines are reasonable and necessary.

SECTION 12. Section 39.903, Utilities Code, is amended by adding Subsection (j-1) to read as follows:

(j-1) The commission shall adopt rules governing the bill payment assistance program provided under Subsection (e)(1)(B). The rules must provide that a customer is eligible to receive the assistance only if the assistance is necessary to prevent the disconnection of service for nonpayment of bills and the electric customer is or has in the customer's household one or more seriously ill or disabled low-income persons whose health or safety may be injured by the disconnection. The commission may prescribe the documentation necessary to demonstrate eligibility for the assistance and may establish additional eligibility criteria. The Health and Human Services Commission, on request of the commission, shall assist in the adoption and implementation of these rules.

SECTION 13. (a) The Public Utility Commission of Texas shall conduct a comprehensive review of the reporting requirements relating to telecommunications providers that are prescribed by statute or commission rules.

(b) In conducting the review, the Public Utility Commission of Texas shall:

(1) solicit input and assistance from appropriate affected persons, as that term is defined by Section 11.003, Utilities Code; and

(2) consider:

(A) the manner in which information included in a report is used;

(B) whether information included in a report is duplicative of information included in a different report; and

(C) whether the requirements relating to a report the commission determines is necessary can be changed to make the reporting process more efficient.

(c) The Public Utility Commission of Texas shall conclude the review required by this section not later than September 30, 2006, and shall report to the legislature on the results of the review. The report must include:

(1) specific recommendations on which reports the commission determines are necessary and which are not necessary;

(2) for a report the commission determines is necessary, whether the requirements relating to the report can be changed to make the reporting process more efficient; and

(3) the actions the commission has taken or will take to amend commission rules to reflect the results of the review.

(d) If the Public Utility Commission of Texas determines that legislation is necessary or appropriate to eliminate or change reporting requirements prescribed by statute, the commission shall include those recommendations in the biennial report to the legislature required by Section 52.006, Utilities Code.

SECTION 14. Section 52.254, Utilities Code, is repealed.

SECTION 15. The change in law made by this Act relating to qualifications and eligibility to serve as a commissioner or to be employed with the Public Utility Commission of Texas applies only to a commissioner or employee appointed or employed after the effective date of this Act. A commissioner or employee of the Public Utility Commission of Texas who is serving or employed on the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 16. The change in law made by this Act to Section 15.023, Utilities Code, applies only to a violation committed on or after the effective date of this Act. A violation committed before the effective date of this Act is governed by the law in effect when the violation was committed, and the former law is continued in effect for that purpose.

SECTION 17. An independent organization certified by the Public Utility Commission of Texas before September 1, 2005, shall modify the organization's governing body to comply with Subsection (g), Section 39.151, Utilities Code, as amended by this Act, not later than September 1, 2006. On or after September 1, 2006, the Public Utility Commission of Texas may decertify an independent organization whose governing body does not comply with Subsection (g), Section 39.151, Utilities Code, as amended by this Act.

SECTION 18. This Act takes effect September 1, 2005.

The Conference Committee Report on **SB 408** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 409

Senator Nelson submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 409** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

NELSON
ELTIFE
FRASER
HARRIS

P. KING
R. COOK
CRABB

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and functions of the Office of Public Utility Counsel.

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

SECTION 1. Section 13.002, Utilities Code, is amended to read as follows:

Sec. 13.002. APPLICATION OF SUNSET ACT. The Office of Public Utility Counsel is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2011 ~~[2005]~~.

SECTION 2. Subchapter A, Chapter 13, Utilities Code, is amended by adding Sections 13.004 through 13.007 to read as follows:

Sec. 13.004. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

(a) The counsellor shall develop and implement a policy to encourage the use of appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal 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 counsellor 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 alternative dispute resolution; and

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

Sec. 13.005. COMPLAINTS. (a) The office shall maintain a system to promptly and efficiently act on complaints filed with the office that the office has the authority to resolve. The office shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The office shall make information available describing its procedures for complaint investigation and resolution.

(c) The office shall periodically notify the complaint parties of the status of the complaint until final disposition.

Sec. 13.006. TECHNOLOGY POLICY. The counsellor 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. 13.007. MANAGEMENT AUDIT. (a) The state auditor, in coordination with the Legislative Budget Board, shall conduct a management audit of the office to evaluate the office's performance measures to determine the accuracy of calculations and whether the measures accurately depict the impact of the office. The audit must include an estimation of savings to residential and small commercial consumers directly attributable to office participation in proceedings.

(b) The state auditor must complete the audit required by this section and deliver a report on the audit to the governor, lieutenant governor, and speaker of the house of representatives not later than August 1, 2006.

(c) This section expires September 1, 2006.

SECTION 3. Section 13.023, Utilities Code, is amended by amending Subsection (a) and by adding Subsection (c) to read as follows:

(a) It is a ground for removal from office if the counsellor:

(1) does not have at the time of taking office ~~[appointment]~~ or maintain during service as counsellor the qualifications required by Section 13.022;

(2) is ineligible for service as counsellor under ~~[violates a prohibition provided by]~~ Section 13.022, 13.042, or 13.043; or

(3) cannot discharge the counsellor's duties for a substantial part of the term for which the counsellor is appointed because of illness or disability.

(c) If an employee has knowledge that a potential ground for removal of the counsellor exists, the employee shall notify the next highest ranking employee of the office, other than the counsellor, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 4. Section 13.042, Utilities Code, is amended to read as follows:

Sec. 13.042. CONFLICT OF INTEREST ~~[RELATIONSHIP WITH TRADE ASSOCIATION]~~. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not serve as counsellor or be an employee of the office 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.) ~~[who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule]~~ if the person is:

(1) an officer, employee, or paid consultant of a Texas trade association in the field of utilities; or

(2) the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of utilities.

(c) A person may not serve as counsellor or act as the general counsel to the office if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the office.

SECTION 5. Section 13.063, Utilities Code, is amended to read as follows:

Sec. 13.063. ANNUAL REPORTS [~~REPORT~~]. (a) The office shall prepare annually a complete and detailed written report accounting for all funds received and disbursed by the office during the preceding fiscal year. The annual report must meet the reporting requirements applicable to financial reporting in the General Appropriations Act.

(b) The office shall prepare annually a report on the office's activities during the preceding year and submit the report to the standing legislative committees that have jurisdiction over the office, the house appropriations committee, the senate finance committee, and the Sunset Advisory Commission. At a minimum, the report must include:

(1) a list of the types of activities conducted by the office and the time spent by the office on each activity;

(2) the number of hours billed by the office for representing residential or small commercial consumers in proceedings;

(3) the number of staff positions and the type of work performed by each position; and

(4) the office's rate of success in representing residential or small commercial consumers in appealing commission decisions.

SECTION 6. Subchapter D, Chapter 13, Utilities Code, is amended by adding Section 13.064 to read as follows:

Sec. 13.064. PUBLIC HEARING. (a) The office annually shall conduct a public hearing to assist the office in developing a plan of priorities and to give the public, including residential and small commercial consumers, an opportunity to comment on the office's functions and effectiveness.

(b) A public hearing held under this section is not subject to Chapter 551, Government Code.

(c) The office shall file notice of a public hearing held under this section with the secretary of state for publication in the Texas Register.

SECTION 7. Subsection (c), Section 13.022, Utilities Code, is repealed.

SECTION 8. The change in law made by this Act relating to qualifications and eligibility to serve as public utility counsel or to be employed with the Office of Public Utility Counsel applies only to a counsellor or employee appointed or employed after the effective date of this Act. A counsellor or employee of the Office of Public Utility Counsel who is serving or employed on the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

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

The Conference Committee Report on **SB 409** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 265**

Senator Williams submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

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 **SB 265** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WILLIAMS
AVERITT
ELTIFE
LUCIO
VAN DE PUTTE
On the part of the Senate

B. KEFFER
TAYLOR
VAN ARSDALE
DRIVER
SEAMAN
On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to certain continuing education requirements for insurance agents.

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

SECTION 1. Subchapter B, Chapter 4004, Insurance Code, as effective April 1, 2005, is amended by adding Section 4004.0535 to read as follows:

Sec. 4004.0535. CONTINUING EDUCATION CREDIT FOR PARTICIPATION IN CERTAIN ASSOCIATIONS. (a) The commissioner by rule may authorize the department to grant not more than four hours of continuing education credit to an agent who is an active member of a state or national insurance association.

(b) The commissioner by rule shall:

(1) specify the types of associations that constitute state or national insurance associations; and

(2) establish reasonable requirements for active participation in such an association.

(c) An agent may not use continuing education credit granted under this section to satisfy:

(1) continuing education hours required to be completed in a classroom setting or classroom equivalent under Section 4004.051; or

(2) the ethics requirement adopted under Section 4004.054.

(d) An agent who seeks continuing education credit under this section shall provide to the department in the manner prescribed by the commissioner a sworn affirmation that the agent is an active member of a state or national insurance association described by Subsection (a) and, for the number of continuing education hours claimed, has:

(1) reviewed educational materials provided by that association; or

(2) attended educational presentations sponsored by that association.

SECTION 2. The commissioner of insurance shall adopt rules as required by Section 4004.0535, Insurance Code, as added by this Act, not later than December 31, 2005.

SECTION 3. Section 4004.0535, Insurance Code, as added by this Act, applies only to a license issued or renewed on or after January 1, 2006.

SECTION 4. This Act takes effect September 1, 2005.

The Conference Committee Report on **SB 265** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 14

Senator Jackson submitted the following Conference Committee Report:

Austin, Texas

May 28, 2005

Honorable David Dewhurst

President of the Senate

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 **SB 14** 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

FRASER

LUCIO

VAN DE PUTTE

On the part of the Senate

SMITHEE

EILAND

SEAMAN

TAYLOR

VAN ARSDALE

On the part of the House

A BILL TO BE ENTITLED AN ACT

relating to rates for certain property and casualty insurance and regulation of insurer market conduct.

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

SECTION 1. Article 5.144, Insurance Code, is amended by amending Subsection (b) and adding Subsections (b-1) and (b-2) to read as follows:

(b) Except as provided by Subsection (d) of this article, if the commissioner determines that an insurer has charged a rate for personal automobile insurance or residential property insurance that is excessive or unfairly discriminatory, as described by Article 5.13-2 [~~or 5.101~~] of this code, the commissioner may order the insurer to:

(1) issue a refund of the excessive or unfairly discriminatory portion of the premium, plus interest on that amount, directly to each affected policyholder if the amount of that portion of the premium is at least 7.5 percent of the total premium charged for the coverage; or

(2) if the amount of that portion of the premium is less than 7.5 percent:

(A) provide each affected policyholder who renews the policy a future premium discount in the amount of the excessive or unfairly discriminatory portion of the premium, plus interest on that amount; and

(B) provide each affected policyholder who does not renew or whose coverage is otherwise terminated a refund in the amount described by Subdivision (1) of this subsection.

(b-1) The rate for interest assessed under Subsection (b) of this article is the lesser of 18 percent or the sum of six percent and the prime rate for the calendar year in which the commissioner's order finding that the rate is excessive or unfairly discriminatory is issued. For purposes of this subsection, the prime rate is the prime rate as published in The Wall Street Journal for the first day of the calendar year that is not a Saturday, Sunday, or legal holiday. The period for the refund and interest begins on the date the department first provides the insurer with formal written notice that the insurer's filed rate is excessive or unfairly discriminatory, and interest continues to accrue until the refund is paid. An insurer may not be required to pay any interest penalty if the insurer prevails in an appeal of the commissioner's order under Subchapter D, Chapter 36, of this code.

(b-2) An insurer may not claim a premium tax credit to which the insurer is otherwise entitled unless the insurer complies with Subsection (b) of this article.

SECTION 2. Article 5.171, Insurance Code, is amended to read as follows:

Art. 5.171. RATING TERRITORIES. Notwithstanding any other provision of this code, an insurer, in writing residential property or personal automobile insurance, may not use rating territories that subdivide a county unless:

(1) the county is subdivided; and

(2) the rate for any subdivisions within that county is not greater than 15 percent higher than the rate used in any other subdivisions in the county by that insurer, except that the commissioner may by rule allow a greater rate difference [~~for residential property insurance or personal automobile insurance~~].

SECTION 3. Title 5, Insurance Code, is amended by adding Subtitle G to read as follows:

SUBTITLE G. REGULATION OF INSURER MARKET CONDUCT

CHAPTER 751. MARKET CONDUCT SURVEILLANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 751.001. SHORT TITLE. This chapter may be cited as the Insurance Market Conduct Surveillance Act.

Sec. 751.002. PURPOSE AND SCOPE. (a) The purpose of this chapter is to establish a framework for department market conduct actions, including:

(1) processes and systems for identifying, assessing, and prioritizing market conduct problems that have a substantial adverse impact on consumers, policyholders, and claimants;

(2) development of appropriate market conduct actions by the commissioner as required to:

(A) substantiate market conduct problems; and

(B) remedy significant market conduct problems; and

(3) procedures to communicate and coordinate market conduct actions with other states to foster the most efficient and effective use of resources.

(b) Notwithstanding any other law of this state, the department or commissioner, as applicable, may undertake market analysis or market conduct action only as provided by this chapter.

Sec. 751.003. DEFINITIONS. (a) In this chapter:

(1) "Complaint" means a written or documented oral communication, the primary intent of which is to express a grievance or an expression of dissatisfaction.

(2) "Desk examination" means a targeted examination conducted by an examiner at a location other than an insurer's premises. The term includes an examination performed at the department's offices during which the insurer provides requested documents for department review by hard copy or by microfiche, disk, or other electronic media.

(3) "Market analysis" means a process under which market conduct surveillance personnel collect and analyze information from filed schedules, surveys, required reports, and other sources as necessary to:

(A) develop a baseline understanding of the marketplace; and

(B) identify insurer patterns or practices that:

(i) deviate significantly from the norm; or

(ii) pose a potential risk to the insurance consumer.

(4) "Market analysis handbook" means the outline of the elements and objectives of market analysis as developed and adopted by the National Association of Insurance Commissioners, and used to establish a uniform process by which states may establish and implement market analysis programs.

(5) "Market conduct action" means any activity that the commissioner may initiate to assess and address insurer market practices before conducting a targeted examination. The term does not include a commissioner action taken to resolve:

(A) an individual consumer complaint; or

(B) another report relating to a specific instance of insurer misconduct.

(6) "Market conduct examination" means a review of one or more lines of business of an insurer domiciled in this state that is not conducted for cause. The term includes a review of rating, tier classification, underwriting, policyholder service, claims, marketing and sales, producer licensing, complaint handling practices, or compliance procedures and policies.

(7) "Market conduct examiners handbook" means the set of guidelines, developed and adopted by the National Association of Insurance Commissioners, that document established practices to be used by market conduct surveillance personnel in developing and executing an examination under this chapter.

(8) "Market conduct surveillance personnel" means those individuals employed by or under contract with the department who collect, analyze, review, or act on information regarding insurer patterns or practices.

(9) "Market conduct uniform examination procedures" means the set of guidelines developed and adopted by the National Association of Insurance Commissioners designed to be used by market conduct surveillance personnel in conducting an examination under this chapter.

(10) "On-site examination" means a targeted examination that is conducted at:

(A) the insurer's home office; or

(B) another location at which the records under review are stored.

(11) "Qualified contract examiner" means a person qualified by education, experience, and any applicable professional designations who is under contract with the commissioner to perform market conduct actions.

(12) "Standard data request" means the set of field names and descriptions developed and adopted by the National Association of Insurance Commissioners for use by market conduct surveillance personnel in an examination.

(13) "Targeted examination" means a limited review and analysis, conducted through a desk examination or an on-site examination and in accordance with the market conduct uniform examination procedures, of specific insurer conduct, practices, or risks identified through market analysis that have not been remedied by the insurer, including:

(A) underwriting and rating;

(B) marketing and sales;

(C) complaint handling operations and management;

(D) advertising materials;

(E) licensing;

(F) policyholder services;

(G) claims handling;

(H) policy forms and filings; or

(I) tier classification.

(14) "Third-party model or product" means a model or product provided by an entity that is separate from and not under direct or indirect corporate control of the insurer using the model or product.

(b) In this chapter, "affiliate" and "subsidiary" have the meanings described by Section 823.003.

Sec. 751.004. IMMUNITY. (a) A cause of action does not arise, and liability may not be imposed, for any statements made or conduct performed in good faith while implementing this chapter, against:

(1) the commissioner;

(2) an authorized representative of the commissioner; or

(3) an examiner appointed by the commissioner.

(b) A cause of action does not arise, and liability may not be imposed, against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner under an examination made under this chapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

(c) A person identified in Subsection (a) is entitled to attorney's fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities conducted in implementing this chapter, and the party bringing the action was not substantially justified in doing so. For purposes of this subsection, an action is "substantially justified" if the action had a reasonable basis in law or fact at the time that it was initiated.

(d) This section does not abrogate or modify any common law or statutory privilege or immunity.

[Sections 751.005-751.050 reserved for expansion]

SUBCHAPTER B. GENERAL POWERS AND DUTIES OF COMMISSIONER

Sec. 751.051. PARTICIPATION IN NATIONAL MARKET CONDUCT DATABASES. (a) The commissioner shall collect and report market data to the National Association of Insurance Commissioners' market information systems, including the complaint database system, the examination tracking system, the regulatory information retrieval system, or other successor systems of that association, as determined by the commissioner.

(b) Information collected and maintained by the department shall be compiled in a manner that meets the requirements of the National Association of Insurance Commissioners.

Sec. 751.052. COORDINATION WITH OTHER STATES. The commissioner shall coordinate the department's market analysis and examination efforts with other states through the National Association of Insurance Commissioners.

Sec. 751.053. INFORMATION FROM COMMISSIONER. (a) At least once annually or more frequently if determined necessary by the commissioner, the commissioner shall provide in an appropriate manner to insurers and other entities subject to this code information regarding new laws and rules, enforcement actions, and other information the commissioner considers relevant to ensure compliance with market conduct requirements.

(b) The commissioner may provide the notice required under Subsection (a) in an electronic format that is designed to give insurers and other entities adequate notice.

(c) Failure by the commissioner to provide the information described by Subsection (a) does not constitute a defense for an insurer who fails to comply with an insurance law of this state.

Sec. 751.054. REPORT OF VIOLATIONS. (a) The commissioner shall designate an individual within the department whose responsibilities shall include the receipt of information from employees of insurers and other entities regulated by the department regarding violations of laws or rules by their employers. The commissioner's designee shall be properly trained in the handling of that information.

(b) Information received under this section is a confidential communication and is not public information.

Sec. 751.055. EXERCISE OF SUBPOENA AUTHORITY. The commissioner has the subpoena power authorized by Subchapter C, Chapter 36, for the production of documents under this chapter and enforcement of this subtitle.

[Sections 751.056-751.100 reserved for expansion]

SUBCHAPTER C. RELATIONS WITH OTHER STATES

Sec. 751.101. COMMISSIONER AUTHORITY; INTERACTIONS WITH OTHER INSURANCE COMMISSIONERS OF OTHER STATES. (a) The commissioner has responsibility for conducting market conduct examinations on domestic insurers. The commissioner may delegate that responsibility to the insurance commissioner of another state, if that insurance commissioner agrees to accept the delegated responsibility. If the commissioner elects to delegate responsibility for examining an insurer, the commissioner shall accept a report of the examination prepared by the insurance commissioner to whom the responsibility has been delegated.

(b) If the insurer to be examined is part of an insurance holding company system, the commissioner may also seek to simultaneously examine any affiliate of the insurer that is authorized to write the same types of insurance in this state as the insurer if the insurance commissioner of the state in which the affiliate is organized consents and delegates responsibility for that examination.

(c) In lieu of conducting a targeted examination of an insurer that holds a certificate of authority in this state but is not a domestic insurer, the commissioner shall accept a report of a market conduct examination regarding that insurer prepared by the insurance commissioner of the state in which the insurer is organized or by another state if:

(1) the laws of the examining state that are applicable to the subject of the examination are substantially similar to those of this state; and

(2) the examining state has a market conduct surveillance system that the commissioner deems comparable to the market conduct surveillance system required under this chapter.

(d) The commissioner's determination under Subsection (c)(2) is discretionary with the commissioner and is not subject to appeal.

(e) Subject to a determination under Subsection (c), if a market conduct examination conducted by another state results in a finding that an insurer should modify a specific practice or procedure, the commissioner shall accept documentation that the insurer has made a similar modification in this state in lieu of initiating a market conduct action or examination related to that practice or procedure. The commissioner may require other or additional practice or procedure modifications.

[Sections 751.102-751.150 reserved for expansion]

SUBCHAPTER D. MARKET ANALYSIS PROCEDURES

Sec. 751.151. COLLECTION OF INFORMATION; COMMISSIONER ANALYSIS. (a) Subject to Subsection (d), the commissioner shall gather insurance market information from:

(1) data available to the department, including survey results and information required to be reported to the department;

(2) information collected by the National Association of Insurance Commissioners and other public and private sources; and

(3) information from within and outside the insurance industry.

(b) The commissioner shall analyze the information compiled under Subsection (a) as necessary to:

(1) develop a baseline understanding of the insurance marketplace; and

(2) identify for further review insurers or insurance practices that deviate significantly from the norm or that pose a potential risk to the insurance consumer.

(c) The commissioner shall use the market analysis handbook as a resource in performing the analysis required under this section.

(d) Except as otherwise specifically provided, the department or the commissioner, as applicable, may not require an insurer to report information in a manner that is inconsistent with the records the insurer maintains in the ordinary course of business or can create at a reasonable expense or effort.

Sec. 751.152. ADDITIONAL ANALYSIS OF MARKET ACTIONS. (a) If, as a result of the market analysis, the commissioner determines that further inquiry into a particular insurer or insurance practice is needed, the commissioner shall consider taking one or more of the market conduct actions described by Subsection (b) before conducting a targeted examination. If a market conduct action selected by the commissioner requires the participation of or a response by the affected insurer, the commissioner shall notify the insurer of the action selected in writing.

(b) Market conduct actions described by Subsection (a) may include:

(1) correspondence with the insurer;

(2) insurer interviews;

(3) information gathering;

(4) policy and procedure reviews;

(5) interrogatories; and

(6) review of insurer self-evaluation and compliance programs, including insurer membership in a best-practice organization.

(c) The commissioner shall select market conduct actions that are efficient and cost-effective for the department and the insurer while protecting the interests of the insurance consumer.

(d) The commissioner shall take steps reasonably necessary to:

(1) eliminate requests for information that duplicates or conflicts with information provided as part of an insurer's annual financial statement, the annual market conduct statement of the National Association of Insurance Commissioners, or other required schedules, surveys, or reports that are regularly submitted to the commissioner, or with data requests made by other states if that information is available to the commissioner, unless the information is state specific; and

(2) coordinate the market conduct actions and findings of this state with those of other states.

Sec. 751.153. PROTOCOLS FOR MARKET CONDUCT ACTIONS. (a) Each market conduct action taken as a result of a market analysis:

(1) must focus on the general business practices and compliance activities of insurers, rather than identifying infrequent or unintentional random errors that do not cause significant consumer harm; and

(2) may not result in a market conduct examination, unless the head of the insurance regulatory agency in the insurer's state of domicile determines that a market conduct examination is needed.

(b) The commissioner may determine the frequency and timing of the market conduct actions. The timing of an action depends on the specific market conduct action to be initiated unless extraordinary circumstances indicating a risk to consumers require immediate action.

(c) If the commissioner has information that more than one insurer is engaged in practices that may violate statutes or rules, the commissioner may schedule and coordinate multiple examinations simultaneously.

(d) The commissioner shall provide an insurer with an opportunity to resolve to the satisfaction of the commissioner any matter that arises as a result of a market analysis before any additional market conduct actions are taken against the insurer. If the insurer has modified a practice or procedure as a result of a market conduct action taken or examination conducted by the insurance commissioner of another state, and the commissioner deems that state's market conduct surveillance system comparable to the system required under this chapter, the commissioner may accept the modified practice or procedure and may require other or additional practice or procedure modifications.

(e) For an application by the department of a handbook, guideline, or other product referenced in this chapter that is the work product of the National Association of Insurance Commissioners that changes the way in which market conduct actions are conducted, the commissioner shall give notice and provide interested parties with an opportunity for a public hearing as provided by Chapter 2001, Government Code, if the change:

(1) necessitates a change in a statute or rule; or

(2) deviates from the applicable handbook, guideline, or other product most recently adopted by the National Association of Insurance Commissioners.

(f) Except as otherwise provided by law, each insurer or person from whom information is sought, and each officer, director, or agent of that insurer or person, shall provide the commissioner with convenient and free access to all books, records, accounts, papers, documents, and any computer or other recordings relating to the property, assets, business, and affairs of the insurer or person.

(g) Each officer, director, employee, insurance producer, and agent of an insurer or person described by Subsection (f) shall, to the extent of that individual's ability, facilitate and aid in a department market conduct action.

[Sections 751.154-751.200 reserved for expansion]

SUBCHAPTER E. EXAMINATIONS

Sec. 751.201. EXAMINATION. (a) If the commissioner determines that a market conduct action described by Section 751.152(b) is not appropriate, the commissioner may conduct a targeted examination in accordance with the market conduct uniform examination procedures and the market conduct examiners handbook.

(b) A targeted examination may be conducted through a desk examination or an on-site examination. To the extent feasible, the department shall conduct a market conduct examination through desk examinations and data requests before conducting an on-site examination.

(c) The department shall conduct an examination in accordance with the market conduct examiners handbook and the market conduct uniform examinations procedures.

(d) The department shall use the standard data request or a successor product that is substantially similar to the standard data request as adopted by the commissioner by rule.

(e) If the insurer to be examined is not a domestic insurer, the commissioner shall coordinate the examination with the insurance commissioner of the state in which the insurer is organized.

Sec. 751.202. WORK PLAN. Before beginning an examination, market conduct surveillance personnel shall prepare a work plan that includes:

- (1) the name and address of the insurer to be examined;
- (2) the name and contact information of the examiner-in-charge;
- (3) a statement of the reasons for the examination;
- (4) a description of the scope of the examination;
- (5) the date the examination is scheduled to begin;
- (6) notice to any non-insurance department personnel who will assist in the examination;
- (7) a time estimate for the examination; and
- (8) if the cost of the examination is billed to the affected insurer:
 - (A) a budget for the examination; and
 - (B) an identification of factors that will be included in the billing.

Sec. 751.203. NOTICE OF EXAMINATION. (a) Unless the examination is conducted in response to extraordinary circumstances as described by Section 751.153(b), the department shall notify an affected insurer of an examination not later than the 60th day before the scheduled date of the beginning of the examination. The notice must include the examination work plan and a request that the insurer name an examination coordinator for the insurer.

(b) In addition to the notice required under Subsection (a), the commissioner shall post notice that a market conduct examination has been scheduled on the National Association of Insurance Commissioners examination tracking system.

(c) If a targeted examination is expanded beyond the reasons provided to the insurer in the notice of the examination required under Subsection (a), the commissioner shall provide written notice to the insurer, explaining the extent of the expansion and the reasons for the expansion. The department shall provide a revised work plan to the insurer before the beginning of any significantly expanded examination.

Sec. 751.204. PRE-EXAMINATION CONFERENCE. Not later than the 30th day before the scheduled date of the examination, the commissioner shall conduct a pre-examination conference with the insurer's examination coordinator and key personnel to clarify expectations.

Sec. 751.205. EXIT CONFERENCE. Before the conclusion of an examination, the member of the market conduct surveillance personnel who is designated as the examiner-in-charge shall schedule an exit conference with the insurer.

Sec. 751.206. EXAMINATION REPORT. (a) Unless the commissioner and the insurer agree to a different schedule, the commissioner shall follow the time line established under this section.

(b) The commissioner shall deliver the draft examination report to the insurer not later than the 60th day after the date the examination is completed. For purposes of this section, the date the examination is completed is the date on which the exit conference is conducted.

(c) Not later than the 30th day after the date on which the insurer receives the draft examination report, the insurer shall provide any written comments regarding the report to the department.

(d) The department shall make a good faith effort to resolve issues with the insurer informally and shall prepare a final examination report not later than the 30th day after the date of receipt of the insurer's written comments on the draft report unless a mutual agreement is reached to extend the deadline.

(e) The department shall include the insurer's responses in the final examination report. The responses may be included as an appendix or in the text of the examination report. An insurer is not obligated to submit a response. An individual involved in the examination may not be named in either the report or the insurer response except to acknowledge the individual's involvement.

(f) The commissioner may make corrections and other changes to the final examination report as appropriate, and shall issue the report to the insurer. Not later than the 30th day after receipt of the final examination report under this subsection, the insurer shall accept the report, accept the findings of the report, or request a hearing. The commissioner and the insurer by mutual agreement may extend the period for an additional 30 days. A request for a hearing must be made in writing and must follow the requirements of Chapter 2001, Government Code.

Sec. 751.207. CONFIDENTIALITY OF EXAMINATION REPORT INFORMATION. (a) A final or preliminary market conduct examination report, and any information obtained during the course of an examination, is confidential and is not subject to disclosure under Chapter 552, Government Code. This section may not be construed to limit the commissioner's authority to use any final or preliminary market conduct examination report, any examiner or company work papers or other documents, or any other information discovered or developed during the course of an examination in the furtherance of any legal or regulatory action that the commissioner, in the commissioner's sole discretion, may deem appropriate.

(b) This chapter does not prevent the commissioner from disclosing at any time the contents of a final market conduct examination report to the department, the insurance department of any other state, or an agency of the federal government, if the department or agency receiving the report agrees in writing to maintain the information as confidential and in a manner consistent with this chapter.

(c) The commissioner shall provide to an insurer subject to a final market conduct examination a written agreement described by Subsection (b) not later than the fifth day after the date the final market conduct examination is released under Subsection (b).

Sec. 751.208. ASSESSMENT OF COSTS OF EXAMINATION. (a) Subject to Subsection (d), if the reasonable and necessary cost of a market conduct examination is to be assessed against the affected insurer, fees for that cost must be consistent with those otherwise authorized by law. The fees must be itemized and bills for the fees must be provided to the insurer on a monthly basis for review prior to submission for payment.

(b) The commissioner shall actively manage and oversee examination costs, including costs associated with the use of department examiners and with retaining qualified contract examiners necessary to perform an on-site examination. To the extent the commissioner retains outside assistance, the commissioner shall adopt by rule written protocols that:

(1) clearly identify the types of functions to be subject to outsourcing;
(2) provide specific time lines for completion of the outsourced review;
(3) require disclosure of recommendations made by contract examiners;
(4) establish and use a dispute resolution or arbitration mechanism to resolve conflicts with insurers regarding examination fees; and

(5) require disclosure of the terms of contracts entered into with outside consultants, and specifically terms regarding the fees or hourly rates that may be charged by those consultants.

(c) The commissioner must review and affirmatively endorse detailed billings made by a qualified contract examiner before the detailed billings are sent to the insurer.

(d) An insurer may not be required to provide reimbursement for examiner fees under Subsection (a), whether those fees are incurred by market conduct surveillance personnel or qualified contract examiners, to the extent that those fees exceed the fees prescribed in the market conduct examiners handbook and any successor documents to that handbook, unless the commissioner demonstrates that the fees prescribed in the handbook are inadequate under the circumstances of the examination.

Sec. 751.209. LIMIT ON CERTAIN EXAMINATIONS. The commissioner may not conduct a market conduct examination more frequently than once every three years. The commissioner may defer conducting a market conduct examination for longer than once every three years.

[Sections 751.210-751.250 reserved for expansion]

SUBCHAPTER F. CONFIDENTIALITY REQUIREMENTS

Sec. 751.251. NO WAIVER. (a) The disclosure to the commissioner under this subchapter of a document, material, or information does not constitute the waiver of any applicable privilege or claim of confidentiality regarding the document, material, or information.

(b) Notwithstanding Subsection (a), an insurer may not be compelled to disclose a self-audit document or waive any statutory or common law privilege. An insurer may, however, voluntarily disclose a document described by this subsection to the commissioner in response to any market conduct action or examination.

(c) For the purposes of Subsection (b), "self-audit document" means a document that is prepared as a result of or in connection with an insurance compliance audit.

Sec. 751.252. AUTHORITY OF COMMISSIONER. (a) The commissioner may share documents, materials, or other information obtained by or disclosed to the commissioner under this chapter with other state, federal, and international regulatory agencies and law enforcement authorities if the recipient agrees to and has the legal authority to maintain the confidentiality and privileged status of the document, material, or other information.

(b) The commissioner may receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners and that association's affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions. The commissioner shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that the document, material, or information is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(c) Consistent with this section, the commissioner may enter into agreements governing the sharing and use of information.

[Sections 751.253-751.300 reserved for expansion]

SUBCHAPTER G. MARKET CONDUCT SURVEILLANCE PERSONNEL

Sec. 751.301. PERSONNEL; QUALIFICATIONS. (a) To conduct market conduct surveillance under this chapter, the commissioner may designate department staff to perform duties under this chapter, and may supplement that staff with qualified outside professional assistance if the commissioner determines that that assistance is necessary.

(b) Market conduct surveillance personnel must be qualified by education and experience and, if applicable, must hold appropriate professional designations.

Sec. 751.302. CONFLICT OF INTEREST. (a) An individual who is a member of the market conduct surveillance personnel has a conflict of interest, either directly or indirectly, if the individual is affiliated with the management of, has been employed by, or owns a pecuniary interest in an insurer subject to an examination conducted under this chapter.

(b) This section may not be construed to automatically preclude the individual from being:

(1) a policyholder or claimant under an insurance policy;

(2) a grantee of a mortgage or similar instrument on the individual's residence from a regulated entity if done under customary terms and in the ordinary course of business;

(3) an investment owner in shares of regulated diversified investment companies; or

(4) a settlor or beneficiary of a blind trust into which any otherwise permissible holdings have been placed.

Sec. 751.303. ACCESS TO INFORMATION. (a) Except as otherwise provided by law, market conduct surveillance personnel shall, as practicable, have free and full access to all books and records, and all employees, officers, and directors, of the insurer during regular business hours.

(b) On the request of market conduct surveillance personnel, an insurer that uses a third-party model or product for any of the activities under examination shall make the details of those models or products available to that personnel.

Sec. 751.304. AUTHORITY OF MARKET CONDUCT SURVEILLANCE PERSONNEL. Market conduct surveillance personnel may examine insurance company personnel under oath if that action is ordered by the commissioner under Subchapter C, Chapter 36.

[Sections 751.305-751.350 reserved for expansion]

SUBCHAPTER H. SANCTIONS

Sec. 751.351. SANCTIONS. (a) The commissioner may impose sanctions under Chapter 82 against an insurer determined, as a result of a market conduct action or other action under this chapter, to have violated this code, a rule adopted under this code, or another insurance law of this state.

(b) In determining an appropriate sanction under Subsection (a) the commissioner shall consider:

(1) any actions taken by the insurer to maintain membership in, and comply with the standards of, best-practice organizations that promote high ethical standards of conduct in the insurance marketplace; and

(2) the extent to which the insurer maintains regulatory compliance programs to self-assess, self-report, and remediate problems detected by the insurer.

SECTION 4. Article 5.43, Insurance Code, is amended by adding Subsections (a-1) and (f) to read as follows:

(a-1) A residential property insurance claim under this article does not include a claim:

(1) resulting from a loss caused by natural causes;

(2) that is filed but is not paid or payable under the policy; or

(3) that an insurer is prohibited from using under Section 3, Article 5.35-4, of this code.

(f) Any change in the amount of a discount provided under this article must comply with the requirements of Section 551.107 of this code.

SECTION 5. Section 551.107, Insurance Code, is amended by amending Subsections (b), (c), (e), and (f) and adding Subsection (g) to read as follows:

(b) A claim under this section does not include a claim:

(1) resulting from a loss caused by natural causes; ~~[or]~~

(2) that is filed but is not paid or payable under the policy; or

(3) that an insurer is prohibited from using under Section 3, Article 5.35-4.

(c) An insurer may assess a premium surcharge at the time an insurance policy is renewed if the insured has filed one ~~[two]~~ or more claims in the preceding three policy years ~~[year]~~. ~~[The insurer may assess an additional premium surcharge if an additional claim is made in the following policy year. The department shall set the amount of any surcharge that may be assessed under this subsection.]~~ The amount of

the surcharge must be based on sound actuarial principles ~~[may not exceed 10 percent of the total premium, including any premium surcharge, actually paid by the insured in the preceding policy year].~~

(e) An insurer may notify an insured who has filed two claims in a period of less than three years that the insurer may refuse to renew the policy if the insured files a third claim during the three-year period. If the insurer does not notify the insured in accordance with this subsection, the insurer may not refuse to renew the policy because of ~~claims [losses]~~. The notice form must:

(1) list the policyholder's claims; and

(2) contain the sentence: "The filing by you of another claim, except for a claim resulting from a loss caused by natural causes, a claim filed but not paid or payable under the policy under which it was filed, or an appliance-related claim that we are prohibited from using under Section 3, Article 5.35-4, Texas Insurance Code, [Another non weather related loss] could cause us to refuse to renew your policy."

(f) In this section, "premium surcharge" means an additional amount that is added to the base rate. The term does not include a reduction or elimination of a discount previously received by an insured, reassignment of an insured from one rating tier to another, re-rating an insured, or re-underwriting an insured by using multiple affiliates ~~[An insurer that renews the insurance policy of an insured who has filed three or more claims under the policy in a three year period may assess a premium surcharge in an amount set by the department].~~

(g) The commissioner shall adopt rules as necessary to implement this section.

SECTION 6. Subsection (d), Article 5.43, Insurance Code, is amended to read as follows:

(d) This article applies to an insurer that uses a tier classification or discount program that has a premium consequence based in whole or in part on claims experience without regard to whether any of the policies that continuously covered the policyholder, as described by Subsections (b)(1) and (2) of this article, was a different type of residential property insurance policy from the policy eligible for the discount.

SECTION 7. The changes in law made by this Act in amending Section 551.107 and Articles 5.43 and 5.171, Insurance Code, as amended by this Act, apply only to the rates applicable to insurance policies that are delivered, issued for delivery, or renewed on or after January 1, 2006. Rates applicable to policies that are delivered, issued for delivery, or renewed before January 1, 2006, are governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for this purpose.

SECTION 8. This Act takes effect September 1, 2005.

The Conference Committee Report on **SB 14** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1126

Senator Madla submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1126** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

MADLA
GALLEGOS
LUCIO
NELSON

URESTI
DELISI
LAUBENBERG
SOLIS
ZEDLER

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 1126** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2309**

Senator Jackson submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2309** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

JACKSON
LUCIO
MADLA

DENNY
ANDERSON
BOHAC
NIXON
STRAUS

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2309** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1207**

Senator Lindsay submitted the following Conference Committee Report:

Austin, Texas
May 27, 2005

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1207** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

LINDSAY
ARMBRISTER
JACKSON
MADLA

HAGGERTY
BONNEN
CALLEGARI
HARDCASTLE
PUENTE

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 1207** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2329

Senator Ogden submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

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 2329** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

LUCIO
HINOJOSA
FRASER

MORRISON
WOOLLEY
PITTS
TURNER
ROSE

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2329** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2233

Senator Duncan submitted the following Conference Committee Report:

Austin, Texas
May 28, 2005

Honorable David Dewhurst
President of the Senate

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 2233** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

DUNCAN
ARMBRISTER
OGDEN
ZAFFIRINI

On the part of the Senate

J. KEFFER
CHISUM
EDWARDS
ROSE

On the part of the House

The Conference Committee Report on **HB 2233** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 905

Senator Williams submitted the following Conference Committee Report:

Austin, Texas
May 26, 2005

Honorable David Dewhurst
President of the Senate

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 905** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WILLIAMS
ELTIFE
JANEK
WEST
ZAFFIRINI

On the part of the Senate

DELISI
B. COOK
SWINFORD
VILLARREAL
WONG

On the part of the House

The Conference Committee Report on **HB 905** was filed with the Secretary of the Senate.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Congratulatory Resolutions

SR 1066 by Lindsay, Commending Edward Arno Muller of Houston for achieving the rank of Eagle Scout.

SR 1067 by Lindsay, Commending Sean Michael Howard of Houston for achieving the rank of Eagle Scout.

SR 1068 by Lindsay, Commending John T. Cavuoti II for achieving the rank of Eagle Scout.

SR 1069 by Lindsay, Commending Edward Arthur Herman of Cypress for achieving the rank of Eagle Scout.

Official Designation Resolutions

SR 1065 by Lindsay, Recognizing June 11, 2005, as Women in Technology Excellence Day.

HCR 194 (Deuell), Designating July 2005 as Lawn Mower Safety Awareness Month.

(Senator Wentworth in Chair)

ADJOURNMENT

On motion of Senator Whitmire, the Senate at 8:38 p.m. adjourned until 1:00 p.m. tomorrow.

APPENDIX

SENT TO GOVERNOR

May 28, 2005

SB 18, SB 66, SB 96, SB 188, SB 213, SB 254, SB 256, SB 263, SB 270, SB 302, SB 325, SB 338, SB 387, SB 425, SB 428, SB 429, SB 442, SB 450, SB 452, SB 493, SB 521, SB 621, SB 626, SB 691, SB 727, SB 729, SB 737, SB 742, SB 760, SB 776, SB 784, SB 967, SB 984, SB 986, SB 998, SB 1002, SB 1045, SB 1090, SB 1105, SB 1106, SB 1108, SB 1238, SB 1247, SB 1284, SB 1345, SB 1351, SB 1408, SB 1440, SB 1448, SB 1455, SB 1461, SB 1479, SB 1491, SB 1524, SB 1564, SB 1569, SB 1693, SB 1795, SB 1840, SB 1888