EIGHTIETH DAY

THURSDAY, MAY 27, 1999

PROCEEDINGS

The Senate met at 1:00 p.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Harris, Haywood, Jackson, Lindsay, Lucio, Madla, Moncrief, Nelson, Nixon, Ogden, Ratliff, Shapiro, Shapleigh, Sibley, Truan, Wentworth, West, Whitmire, Zaffirini.

Absent-excused: Luna.

The President announced that a quorum of the Senate was present.

The Reverend Winn Alley, Saint John's United Methodist Church, Austin, offered the invocation as follows:

> God, thank You for Your life always in the midst of our lives. Remind us once more that angels fly so high because they take themselves so lightly, and help us behave as the "civil" servants of all Your children. Amen.

On motion of Senator Truan and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

LEAVE OF ABSENCE

On motion of Senator Barrientos, Senator Luna was granted leave of absence for today on account of illness.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
May 27, 1999

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 293, Congratulating Jose Nino on being named the 1999 Bank One Tucson International Mariachi Conference Mariachi Director-Teacher of the Year.

HCR 304, Honoring Mariachi Cultural of University High School in Waco.

HCR 305, Honoring state technology award winners from Midland High School.

HCR 306, Honoring state technology award winners from Lee High School.

SCR 66, Recognizing Hilmar G. Moore for 50 years as Mayor of Richmond, Texas.

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

SENATE RESOLUTION 1136

Senator Ratliff offered the following resolution:

BE IT RESOLVED, BY THE Senate of the State of Texas, that Senate Rules 12.03 and 12.04, be suspended in part as provided by Senate Rule 12.08 to enable consideration of, and action on, the following specific matters which may be contained in the Conference Committee Report on **HB 1**.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

SENATE BILL 560 WITH HOUSE AMENDMENTS

Senator Sibley called **SB 560** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 560** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of telecommunications utilities by the Public Utility Commission of Texas and the provision of telecommunications services.

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, the commission is abolished and this title expires September 1, 2005 [~~2001~~].

SECTION 2. 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, 2005 [~~2001~~].

SECTION 3. Section 15.024(c), Utilities Code, is amended to read as follows:

(c) A penalty may not be assessed under this section if the person against whom the penalty may be assessed remedies the violation before the 31st day after the date the person receives the notice under Subsection (b). A person who claims to have remedied an alleged violation has the burden of proving to the commission that the alleged violation was remedied and was accidental or inadvertent. This subsection does not apply to a violation of Chapter 55 or 64.

SECTION 4. Section 51.001, Utilities Code, is amended by amending Subsection (a) and adding Subsection (g) to read as follows:

(a) Significant changes have occurred in telecommunications since the law from which this title is derived was originally adopted. To encourage and accelerate the development of a competitive and advanced telecommunications environment and infrastructure, new rules, policies, and principles must be formulated and applied to protect the public interest. Changes in technology and market structure have increased the need for minimum standards of service quality, customer service, and fair business practices to ensure high-quality service to customers and a healthy marketplace where competition is permitted by law. It is the purpose of this subtitle to grant the commission authority to make and enforce rules necessary to protect customers of telecommunications services consistent with the public interest.

(g) It is the policy of this state to ensure that customers in all regions of this state, including low-income customers and customers in rural and high cost areas, have access to telecommunications and information services, including interexchange services, cable services, wireless services, and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at prices that are reasonably comparable to prices charged for similar services in urban areas. Not later than November 1, 1999, the commission shall begin a review and evaluation of the availability and the pricing of telecommunications and information services, including interexchange services, cable services, wireless services, and advanced telecommunications and information services, in rural and high cost areas, as well as the convergence of telecommunications services. The commission shall file a report with the legislature not later than January 1, 2001. The report must include the commission's recommendations on the issues reviewed and evaluated.

SECTION 5. Sections 51.002(6) and (10), Utilities Code, are amended to read as follows:

(6) "Long run incremental cost" has the meaning assigned by 16 T.A.C. Section 23.91 or its successor.

(10) "Telecommunications provider":

(A) means:

(i) a certificated telecommunications utility;

(ii) a shared tenant service provider;

(iii) a nondominant carrier of telecommunications services;

(iv) a provider of commercial mobile service as defined by Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66), except that the term does not include these entities for the purposes of Chapter 55 or 64;

(v) a telecommunications entity that provides central office based PBX-type sharing or resale arrangements;

(vi) an interexchange telecommunications carrier;

(vii) a specialized common carrier;

(viii) a reseller of communications;

(ix) a provider of operator services;

(x) a provider of customer-owned pay telephone service; or

(xi) another person or entity determined by the commission to provide telecommunications services to customers in this state; and

(B) does not mean:

(i) a provider of enhanced or information services, or another user of telecommunications services, who does not also provide telecommunications services; or

(ii) a state agency or state institution of higher education, or a service provided by a state agency or state institution of higher education.

SECTION 6. Section 51.004, Utilities Code, is amended to read as follows:

Sec. 51.004. PRICING FLEXIBILITY. (a) A discount or other form of pricing flexibility may not be preferential, prejudicial, [~~or~~] discriminatory, predatory, or anticompetitive.

(b) This title does not prohibit a volume discount or other discount based on a reasonable business purpose. A price that is set at or above the long run incremental cost of a service is presumed to comply with this section.

SECTION 7. The section heading to Section 52.058, Utilities Code, is amended to read as follows:

Sec. 52.058. GENERAL PROVISIONS RELATING TO NEW OR EXPERIMENTAL SERVICES OR PROMOTIONAL RATES.

SECTION 8. Subchapter B, Chapter 52, Utilities Code, is amended by adding Sections 52.0583, 52.0584, and 52.0585 to read as follows:

Sec. 52.0583. NEW SERVICES. (a) An incumbent local exchange company may introduce a new service 10 days after providing an informational notice to the commission, to the office, and to any person who holds a certificate of operating authority in the incumbent local exchange company's certificated area or areas or who has an effective interconnection agreement with the incumbent local exchange company.

(b) An incumbent local exchange company shall price each new service at or above the service's long run incremental cost. The commission shall allow a company serving fewer than one million access lines in this state to establish a service's long run incremental cost by adopting, at that company's option, the cost studies of a larger company for that service that have been accepted by the commission.

(c) An affected person, the office on behalf of residential or small commercial customers, or the commission may file a complaint at the commission challenging whether the pricing by an incumbent local exchange company of a new service is in compliance with Subsection (b).

(d) If a complaint is filed under Subsection (c), the incumbent local exchange company has the burden of proving that the company set the price for the new service in accordance with the applicable provisions of this subchapter. If the complaint is finally resolved in favor of the complainant, the company:

(1) shall, not later than the 10th day after the date the complaint is finally resolved, amend the price of the service as necessary to comply with the final resolution; or

(2) may, at the company's option, discontinue the service.

(e) A company electing incentive regulation under Chapter 58 or 59 may introduce new services only in accordance with the applicable provisions of Chapter 58 or 59.

Sec. 52.0584. PRICING AND PACKAGING FLEXIBILITY; CUSTOMER PROMOTIONAL OFFERINGS. (a) Notwithstanding any other provision of this title, an incumbent local exchange company may exercise pricing flexibility in accordance with this section, including the packaging of any regulated service such as basic local telecommunications service with any other regulated or unregulated service or any service of an affiliate. The company may exercise pricing flexibility 10 days after providing an informational notice to the commission, to the office, and to any person who holds a certificate of operating authority in the incumbent local exchange company's certificated area or areas or who has an effective interconnection agreement with the incumbent local exchange company. Pricing flexibility includes all pricing arrangements included in the definition of "pricing flexibility" prescribed by Section 51.002 and includes packaging of any regulated service with any unregulated service or any service of an affiliate.

(b) An incumbent local exchange company, at the company's option, shall price each regulated service offered separately or as part of a package under Subsection (a) at either the service's tariffed rate or at a rate not lower than the service's long run incremental cost. The commission shall allow a company serving fewer than one million access lines in this state to establish a service's long run incremental cost by adopting, at that company's option, the cost studies of a larger company for that service that have been accepted by the commission.

(c) An affected person, the office on behalf of residential or small commercial customers, or the commission may file a complaint alleging that an incumbent local exchange company has priced a regulated service in a manner that does not meet the pricing standards of this subchapter. The complaint must be filed before the 31st day after the date the company implements the rate.

(d) A company electing incentive regulation under Chapter 58 or 59 may use pricing and packaging flexibility and introduce customer promotional offerings only in accordance with the applicable provisions of Chapter 58 or 59.

Sec. 52.0585. CUSTOMER PROMOTIONAL OFFERINGS. (a) An incumbent local exchange company may offer a promotion for a regulated service for not more than 90 days in any 12-month period.

(b) The company shall file with the commission a promotional offering that consists of:

(1) waiver of installation charges or service order charges, or both, for not more than 90 days in a 12-month period; or

(2) a temporary discount of not more than 25 percent from the tariffed rate for not more than 60 days in a 12-month period.

(c) An incumbent local exchange company is not required to obtain commission approval to make a promotional offering described by Subsection (b).

(d) An incumbent local exchange company may offer a promotion of any regulated service as part of a package of services consisting of any regulated service with any other regulated or unregulated service or any service of an affiliate.

SECTION 9. Section 52.102, Utilities Code, as amended by Section 18.04, **SB 1368**, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

Sec. 52.102. LIMITED REGULATORY AUTHORITY. (a) Except as otherwise provided by this subchapter, Subchapters D and K, Chapter 55, and Section 55.011, the commission has only the following jurisdiction over a telecommunications utility subject to this subchapter:

(1) to require registration under Section 52.103;

(2) to conduct an investigation under Section 52.104;

(3) to require the filing of reports as the commission periodically directs;

(4) to require the maintenance of statewide average rates or prices of telecommunications service;

(5) to require a telecommunications utility that had more than six percent of the total intrastate access minutes of use as measured for the most recent 12-month period to pass switched access rate reductions under this title to customers as required by Section 52.112;

(6) to require access to telecommunications service under Section 52.105; and

(7) [~~(6)~~] to require the quality of telecommunications service provided to be adequate under Section 52.106.

(b) The authority provided by Subsection (a)(5) expires on the date on which Section 52.112 expires.

SECTION 10. Section 52.108, Utilities Code, is amended to read as follows:

Sec. 52.108. OTHER PROHIBITED PRACTICES. The commission may enter any order necessary to protect the public interest if the commission finds after notice and hearing that a telecommunications utility has:

(1) failed to maintain statewide average rates;

(2) abandoned interexchange message telecommunications service to a local exchange area in a manner contrary to the public interest; [~~or~~]

(3) engaged in a pattern of preferential or discriminatory activities prohibited by Section 53.003, 55.005, or 55.006; or

(4) failed to pass switched access rate reductions to customers under Chapter 56 or other law, as required by Section 52.112.

SECTION 11. Section 52.110(a), Utilities Code, is amended to read as follows:

(a) In a proceeding before the commission in which it is alleged that a telecommunications utility engaged in conduct in violation of Section 52.107, 52.108, [~~or~~] 52.109, or 52.112, the burden of proof is on:

(1) a telecommunications utility complaining of conduct committed against it in violation of this subchapter; or

(2) except as provided by Subsection (b), the responding telecommunications utility if the proceedings are:

(A) brought by a customer or customer representative who is not a telecommunications utility; or

(B) initiated by the commission.

SECTION 12. Subchapter C, Chapter 52, Utilities Code, is amended by adding Section 52.112 to read as follows:

Sec. 52.112. REDUCTION PASS-THROUGH REQUIRED. (a) Each telecommunications utility that had more than six percent of the total intrastate access

minutes of use as measured for the most recent 12-month period shall pass through to customers switched access rate reductions under this title. The residential customer class shall receive not less than a proportionate share of the reductions.

(b) Within six months following each reduction in intrastate switched access charges under this title, each telecommunications utility subject to this section shall file a report with the commission demonstrating its compliance on an average revenue per minute basis with Subsection (a).

(c) This section expires on the second anniversary of the date incumbent local exchange companies doing business in the state are no longer prohibited by federal law from offering interLATA and interstate long distance service.

SECTION 13. Subchapter D, Chapter 52, Utilities Code, is amended by adding Section 52.155 to read as follows:

Sec. 52.155. PROHIBITION OF EXCESSIVE ACCESS CHARGES. (a) A telecommunications utility that holds a certificate of operating authority or a service provider certificate of operating authority may not charge a higher amount for originating or terminating intrastate switched access than the prevailing rates charged by the holder of the certificate of convenience and necessity in whose territory the call originated or terminated unless:

(1) the commission specifically approves the higher rate; or

(2) subject to commission review, the telecommunications utility establishes statewide average composite originating and terminating intrastate switched access rates based on a reasonable approximation of traffic originating and terminating between all holders of certificates of convenience and necessity in this state.

(b) Notwithstanding any other provision of this title, the commission has all jurisdiction necessary to enforce this section.

SECTION 14. Section 54.007, Utilities Code, is amended to read as follows:

Sec. 54.007. FLEXIBILITY PLAN. (a) After the commission grants an application for a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority or determines that a certificate is not needed for the applicant to provide the relevant services, the commission shall conduct appropriate proceedings to establish a transitional flexibility plan for the incumbent local exchange company in the same area or areas as the new certificate holder.

(b) A basic local telecommunications service price of the incumbent local exchange company may not be increased before the fourth anniversary of the date the certificate is granted to the applicant except that the price may be increased[~~:~~

[~~(1)~~] as provided by this title[~~;~~

[~~(2) when the new certificate holder has completed the build-out plan required by Subchapter C, if applicable; or~~

[~~(3) when a competitor for basic local telecommunications service provides the service in an area in which the build-out requirements have been eliminated~~].

SECTION 15. Subchapter C, Chapter 54, Utilities Code, is amended to read as follows:

SUBCHAPTER C. CERTIFICATE OF OPERATING AUTHORITY

Sec. 54.101. DEFINITION. In this subchapter, "certificate" means a certificate of operating authority.

Sec. 54.102. APPLICATION FOR CERTIFICATE. (a) A [~~In lieu of applying for a certificate of convenience and necessity, a~~] person may apply for a certificate of operating authority.

(b) [~~An applicant for a facilities-based certificate of operating authority must include with the application a proposed build-out plan in compliance with this subchapter that demonstrates how the applicant will, over a six-year period, deploy facilities throughout the geographic area of the certificated service area.~~

[~~(c)~~] The applicant must file with the application a sworn statement that the applicant has applied for each municipal consent, franchise, or permit required for the type of services and facilities for which the applicant has applied.

(c) An affiliate of a person holding a certificate of convenience and necessity may hold a certificate of operating authority if the holder of the certificate of convenience and necessity is in compliance with federal law and Federal Communications Commission rules governing affiliates and structural separation. An affiliate of a person holding a certificate of convenience and necessity may not directly or indirectly sell to a non-affiliate any regulated product or service purchased from the person holding a certificate of convenience and necessity at any rate or price less than the price paid to the person holding a certificate of convenience and necessity.

(d) A person may hold a certificate for all or any portion of a service area for which one or more affiliates of the person holds a certificate of operating authority, a service provider certificate of operating authority, or a certificate of convenience and necessity.

(e) An affiliate of a company that holds a certificate of convenience and necessity and that serves more than five million access lines in this state may hold a certificate of operating authority or service provider certificate of operating authority to provide service in an area of this state in which its affiliated company is the incumbent local exchange company. However, the affiliate holding the certificate of operating authority or service provider certificate of operating authority may not provide in that area customer-specific contracts so long as the affiliated company that is the incumbent local exchange company may not provide customer-specific contracts under Section 58.003 in that area. This subsection does not preclude an affiliate of a company holding a certificate of convenience and necessity from holding a certificate of operating authority in any area of this state to provide advanced services as defined by rules or orders of the Federal Communications Commission.

Sec. 54.103. GRANT OR DENIAL OF CERTIFICATE. (a) The commission must grant or deny a certificate not later than the 60th day after the date the application for the certificate is filed. The commission may extend the deadline on good cause shown.

(b) The commission shall grant each certificate on a nondiscriminatory basis after considering factors such as:

(1) [~~the adequacy of the applicant's build-out plan;~~

[~~(2)~~] the technical and financial qualifications of the applicant; and

(2) [~~(3)~~] the applicant's ability to meet the commission's quality of service requirements.

(c) In an exchange of an incumbent local exchange company that serves fewer than 31,000 access lines, in addition to the factors described by Subsection (b), the commission shall consider:

(1) the effect of granting the certificate on a public utility serving the area and on that utility's customers;

(2) the ability of that public utility to provide adequate service at reasonable rates;

(3) the effect of granting the certificate on the ability of that public utility to act as the provider of last resort; and

(4) the ability of the exchange, not the company, to support more than one provider of service.

(d) Except as provided by Subsections (e) and (f), the commission may grant an application for a certificate only for an area or areas that are contiguous and reasonably compact and cover an area of at least 27 square miles.

(e) In an exchange in a county that has a population of less than 500,000 and that is served by an incumbent local exchange company that has more than 31,000 access lines, an area covering less than 27 square miles may be approved if the area is contiguous and reasonably compact and has at least 20,000 access lines.

(f) In an exchange of a company that serves fewer than 31,000 access lines in this state, the commission may grant an application only for an area that has boundaries similar to the boundaries of the serving central office that is served by the incumbent local exchange company that holds the certificate of convenience and necessity for the area.

[~~Sec. 54.104. BUILD-OUT PLAN REQUIREMENTS. (a) The build-out plan required by Section 54.102 must provide that, by the end of the:~~

[~~(1) first year, 10 percent of the area to be served must be served with facilities that are not facilities of the incumbent local exchange company;~~

[~~(2) third year, 50 percent of the area to be served must be served with facilities that are not facilities of the incumbent local exchange company; and~~

[~~(3) sixth year, 100 percent of the area to be served must be served with facilities that are not facilities of the incumbent local exchange company.~~

[~~(b) The build-out plan may permit the certificate holder to serve not more than 40 percent of the certificate holder's service area by reselling the incumbent local exchange company's facilities. The resale must be in accordance with:~~

[~~(1) Section 54.105; and~~

[~~(2) the resale tariff approved by the commission under Subchapter C, Chapter 60.~~

[~~(c) The resale limitation applies to an incumbent local exchange facility that a certificate holder resells in providing local exchange telephone service, regardless of whether:~~

[~~(1) the certificate holder purchases the facility directly from the incumbent local exchange company; or~~

[~~(2) an intermediary carrier purchases the facility from the incumbent local exchange company and then provides the facility to the certificate holder for resale.~~

[~~(d) To meet the build-out requirement prescribed by this subchapter, a certificate holder:~~

[~~(1) may not use commercial mobile service; and~~

[~~(2) may use personal communication services (PCS) or other wireless technology licensed or allocated by the Federal Communications Commission after January 1, 1995.~~

[~~Sec. 54.105. SIX-YEAR LIMITATION ON RESALE OF SERVICES. Before the sixth anniversary of the date a certificate is granted, the certificate holder may extend service by resale only:~~

[~~(1) in the area it is obligated to serve under the approved build-out plan; and~~

[~~(2) to the distant premises of one of its multi-premises customers beyond the approved build-out area but in its certificated service area.~~]

Sec. 54.104 [~~54.106~~]. TIME OF SERVICE REQUIREMENTS. (a) The commission by rule may prescribe the period within which a certificate holder must be able to serve customers.

(b) Notwithstanding Subsection (a), a certificate holder must serve a customer [~~in the build-out area~~] not later than the 30th day after the date the customer requests service.

[~~Sec. 54.107. REQUIREMENTS RELATING TO CERTAIN FACILITIES. As part of the build-out requirements, the commission may not require a certificate holder to:~~

[~~(1) place a drop facility on each customer's premises; or~~

[~~(2) activate a fiber optic facility in advance of a customer request.~~

[~~Sec. 54.108. BUILD-OUT PLAN COMPLIANCE. (a) A certificate holder shall file periodic reports with the commission demonstrating compliance with:~~

[~~(1) the plan approved by the commission; and~~

[~~(2) the resale limitation prescribed by Section 54.104(b).~~

[~~(b) The commission may administratively and temporarily waive compliance with the six-year build-out plan on a showing of good cause.~~

[~~Sec. 54.109. ELIMINATION OF BUILD-OUT REQUIREMENTS FOR CERTAIN PROVIDERS. (a) The commission may waive the build-out requirements of this subchapter for an additional applicant in a particular area:~~

[~~(1) on or after the sixth anniversary of the date a certificate is granted for that area; or~~

[~~(2) on or after the date a certificate holder completes the holder's build-out plan in that area.~~

[~~(b) The build-out requirements of this subchapter do not apply to a service area:~~

[~~(1) that is served by an incumbent local exchange company that:~~

[~~(A) has more than one million access lines; and~~

[~~(B) on September 1, 1995, was subject to a prohibition under federal law on the provision of interLATA service; and~~

[~~(2) for which all prohibitions on the incumbent local exchange company's provision of interLATA services are removed so the company can offer interLATA service together with local and intraLATA toll service.~~

[~~Sec. 54.110. HEARING ON BUILD-OUT AND RESALE REQUIREMENTS. (a) The commission on application may conduct a hearing to determine:~~

[~~(1) whether the build-out requirements of Sections 54.102(b), 54.103(e) and (f), 54.104, 54.105, 54.106, and 54.107 have created a barrier to the entry of facilities-based local exchange telephone service competition in an exchange in a county that has a population of more than 500,000 and that is served by a company that has more than 31,000 access lines; and~~

[~~(2) the effect of the resale provisions on the development of competition, other than the development of competition in the certificated areas of companies that serve fewer than 31,000 access lines as provided by Section 54.156(a).~~

[~~(b) In making a determination under Subsection (a), the commission shall consider:~~

[~~(1) this title's policy to encourage construction of local exchange networks;~~

[~~(2) the number and type of competitors that have sought to provide local exchange competition under the existing rules prescribed by this title; and~~

[~~(3) whether adopting new build-out and resale rules would make innovative and competitive local exchange telephone services more likely to be provided.~~

[~~(c) The commission may change a requirement described by Subsection (a)(1) or prescribed by Subchapter D if:~~

[~~(1) the commission determines that the build-out requirements have created a barrier to facilities-based local exchange competition in an exchange described by Subsection (a)(1); and~~

[~~(2) the changes will encourage additional facilities-based competition.~~

[~~(d) Notwithstanding Subsection (c), the commission may not reduce an exchange size to below 12 square miles or increase the resale percentage prescribed by Section 54.104(b) to more than 50 percent.~~

[~~(e) A rule adopted under Subsection (c) may apply only to a person who files an application for a certificate after the date the rule is adopted.~~]

Sec. 54.105 [~~54.111~~]. PENALTY FOR VIOLATION OF TITLE. If a certificate holder fails to comply with a requirement of this title, the commission may:

(1) revoke the holder's certificate;

(2) impose against the holder administrative penalties under Subchapter B, Chapter 15; or

(3) take another action under Subchapter B, Chapter 15.

SECTION 16. Subchapter A, Chapter 55, Utilities Code, is amended by adding Section 55.012 to read as follows:

Sec. 55.012. TELECOMMUNICATIONS BILLING. (a) The proliferation of charges for separate services, products, surcharges, fees, and taxes on a bill for telecommunications products or services has increased the complexity of those bills to such an extent that in some cases the bills have become difficult for customers to understand.

(b) A bill from a local exchange company for telecommunications products or services should be simplified into general categories to the extent that simplification is consistent with providing customers sufficient information about the charges included in the bill to understand the basis and source of the charges.

(c) To the extent permitted by law, a monthly bill from a local exchange company for local exchange telephone service shall include an aggregate charge for each of the following categories:

(1) basic local service charges and fees, which includes carrier's charges for basic local telecommunications service and related fees, assessments, and surcharges;

(2) optional services; and

(3) taxes, which includes any taxes applicable to the charges described by Subdivisions (1) and (2).

SECTION 17. Subchapter A, Chapter 55, Utilities Code, is amended by adding Section 55.013 to read as follows:

Sec. 55.013. LIMITATIONS ON DISCONTINUANCE OF BASIC LOCAL TELECOMMUNICATIONS SERVICE. (a) A provider of basic local telecommunications service may not discontinue that service because of nonpayment by a residential customer of charges for long distance service. Payment shall first be allocated to basic local telecommunications service.

(b) For purposes of allocating payment in this section, if the provider of basic local telecommunications service bundles its basic local telecommunications service with long distance service or any other service and provides a discount for the basic local telecommunications service because of that bundling, the rate of basic local telecommunications service shall be the rate the provider charges for stand-alone basic local telecommunications service.

(c) Notwithstanding Subsection (a), the commission shall adopt and implement rules, not later than January 1, 2000, to prevent customer abuse of the protections afforded by this section. The rules must include:

(1) provisions requiring a provider of basic local telecommunications service to offer and implement, at the request and expense of a long distance service provider, toll blocking capability to limit a customer's ability to incur additional charges for long distance services after nonpayment for long distance services; and

(2) provisions regarding fraudulent activity in response to which a provider may discontinue a residential customer's basic local telecommunications service.

(d) Notwithstanding any other provision of this title, the commission has all jurisdiction necessary to establish a maximum price that an incumbent local exchange company may charge a long distance service provider to initiate the toll blocking capability required to be offered under the rules adopted under Subsection (c). The maximum price established under this subsection shall be observed by all providers of basic local telecommunications service in the incumbent local exchange company's certificated service area. Notwithstanding Sections 52.102 and 52.152, the commission has all jurisdiction necessary to enforce this section.

SECTION 18. Subchapter A, Chapter 55, is amended by adding Section 55.014 to read as follows:

Sec. 55.014. PROVISION OF ADVANCED TELECOMMUNICATIONS SERVICES. (a) In this section, "advanced service" means any telecommunications service other than residential or business basic local exchange telephone service, caller identification service, and customer calling features.

(b) This section applies to a company electing under Chapter 58 or a company that holds a certificate of operating authority or service provider certificate of operating authority.

(c) Notwithstanding any other provision of this title, beginning September 1, 2001, a company to which this section applies that provides advanced telecommunications services within the company's urban service areas, shall, on a bona fide retail request for those services, provide in rural areas of this state served by the company advanced telecommunications services that are reasonably comparable to the advanced services provided in urban areas. The company shall offer the advanced telecommunications services:

(1) at prices, terms, and conditions that are reasonably comparable to the prices, terms, and conditions for similar advanced services provided by the company in urban areas; and

(2) within 15 months after the bona fide request for those advanced services.

(d) Notwithstanding any other provision of this title, a company to which this section applies shall, on a bona fide retail request for those services, offer caller identification service and custom calling features in rural areas served by the company. The company shall offer the services:

(1) at prices, terms, and conditions reasonably comparable to the company's prices, terms, and conditions for similar services in urban areas; and

(2) within 15 months after the bona fide request for those services.

(e) This section may not be construed to require a company to:

(1) begin providing services in a rural area in which the company does not provide local exchange telephone service; or

(2) provide a service in a rural area of this state unless the company provides the service in urban areas of this state.

(f) For purposes of this section, a company to which this section applies is considered to provide services in urban areas of this state if the company provides services in a municipality with a population of more than 190,000.

(g) Notwithstanding any other provision of this title, the commission has all jurisdiction necessary to enforce this section.

SECTION 19. Subchapter A, Chapter 55, Utilities Code, is amended by adding Section 55.015 to read as follows:

Sec. 55.015. LIFELINE SERVICE. (a) The commission shall adopt rules prohibiting a telecommunications provider from discontinuing local exchange telephone service to a consumer who receives lifeline service because of nonpayment by the consumer of charges for other services billed by the provider, including long distance service.

(b) The commission shall adopt rules providing for automatic enrollment to receive lifeline service for eligible consumers. The Texas Department of Human Services, on request of the commission, shall assist in the adoption and implementation of those rules. The commission and the Texas Department of Human Services shall enter into a memorandum of understanding establishing the respective duties of the commission and department in relation to the automatic enrollment.

(c) A telecommunications provider may block a lifeline service participant's access to all long distance service except toll-free numbers when the participant owes an outstanding amount for that service. The telecommunications provider shall remove the block without additional cost to the participant on payment of the outstanding amount.

(d) A telecommunications provider shall offer a consumer who applies for or receives lifeline service the option of blocking all toll calls or, if technically capable, placing a limit on the amount of toll calls. The provider may not charge the consumer an administrative charge or other additional amount for the blocking service.

(e) In this section, "lifeline service" means a retail local service offering described by 47 C.F.R. Section 54.401(a), as amended.

SECTION 20. Section 3.312, Public Utility Regulatory Act of 1995 (Article 1446c-0, Vernon's Texas Civil Statutes), as added by Section 1, Chapter 919, Acts of the 75th Legislature, Regular Session, 1997, is codified as Subchapter K, Chapter 55, Utilities Code, and amended to read as follows:

SUBCHAPTER K. SELECTION OF TELECOMMUNICATIONS UTILITIES

Sec. 55.301. STATE POLICY. It is the policy of this state to ensure that all customers are protected from the unauthorized switching of a telecommunications utility selected by the customer to provide telecommunications service.

Sec. 55.302. COMMISSION RULES. (a) The commission shall adopt nondiscriminatory and competitively neutral rules to implement this subchapter, including rules that:

(1) ensure that customers are protected from deceptive practices in the obtaining of authorizations and verifications required by this subchapter;

(2) are applicable to all local exchange telephone services, interexchange telecommunications service, and other telecommunications service provided by telecommunications utilities in this state;

(3) are consistent with the rules and regulations prescribed by the Federal Communications Commission for the selection of telecommunications utilities;

(4) permit telecommunications utilities to select any method of verification of a [~~carrier-initiated~~] change order authorized by Section 55.303;

(5) [~~require telecommunications utilities to maintain records relating to a customer-initiated change in accordance with Section 55.304;~~

[~~(6)~~] require the reversal of certain changes in the selection of a customer's telecommunications utility in accordance with Section 55.304(a) [~~55.305(a)~~];

(6) [~~(7)~~] prescribe, in accordance with Section 55.304(b) [~~55.305(b)~~], the duties of a telecommunications utility that initiates an unauthorized customer change; and

(7) [~~(8)~~] provide for corrective action and the imposition of penalties in accordance with Sections 55.305 [~~55.306~~] and 55.306 [~~55.307~~].

(b) The commission is granted all necessary jurisdiction to adopt rules required by this subchapter and to enforce those rules and this subchapter.

(c) The commission may notify customers of their rights under the rules.

Sec. 55.303. VERIFICATION OF [~~CARRIER-INITIATED~~] CHANGE. [~~(a)~~] A telecommunications utility may verify a [~~carrier-initiated~~] change order by:

(1) obtaining written authorization from the customer;

(2) obtaining a toll-free electronic authorization placed from the telephone number that is the subject of the change order; or

(3) an oral authorization obtained by an independent third party.

[~~(b) In addition to the methods provided by Subsection (a), a telecommunications utility may verify a carrier-initiated change order by mailing to the customer an information package that is consistent with the requirements of 47 C.F.R. Section 64.1100(d) and that contains a postage-prepaid postcard or mailer. The change is considered verified if the telecommunications utility does not receive a cancellation of the change order from the customer within 14 days after the date of the mailing.~~

[~~Sec. 55.304. CUSTOMER-INITIATED CHANGE. (a) A telecommunications utility to whom a customer has changed its service on the initiative of the customer shall maintain a record of nonpublic customer-specific information that could be used to establish that the customer authorized the change.~~

[~~(b) Notwithstanding Subsection (a), if the Federal Communications Commission requires verification, the telecommunications utility shall use the verification methods required by the Federal Communications Commission.~~]

Sec. 55.304 [~~55.305~~]. UNAUTHORIZED CHANGE. (a) If a change in the selection of a customer's telecommunications utility is not made or verified in accordance with this subchapter, the change, on request by the customer, shall be reversed within a period established by commission ruling.

(b) A telecommunications utility that initiates an unauthorized customer change shall:

(1) pay all usual and customary charges associated with returning the customer to its original telecommunications utility;

(2) pay the telecommunications utility from which the customer was changed any amount paid by the customer that would have been paid to that telecommunications utility if the unauthorized change had not been made;

(3) return to the customer any amount paid by the customer that exceeds the charges that would have been imposed for identical services by the telecommunications utility from which the customer was changed if the unauthorized change had not been made; and

(4) provide to the original telecommunications utility from which the customer was changed all billing records to enable that telecommunications utility to comply with this subchapter.

(c) The telecommunications utility from which the customer was changed shall provide to the customer all benefits associated with the service on receipt of payment for service provided during the unauthorized change.

(d) A customer is not liable for charges incurred during the first 30 days after the date of an unauthorized carrier change.

Sec. 55.305 [~~55.306~~]. CORRECTIVE ACTION AND PENALTIES. (a) If the commission finds that a telecommunications utility has repeatedly violated the commission's telecommunications utility selection rules, the commission shall order the utility to take corrective action as necessary. In addition, the utility may be subject to administrative penalties under Sections 15.023-15.027.

(b) An administrative penalty collected under this section shall be used to enforce this subchapter.

Sec. 55.306 [~~55.307~~]. REPEATED AND RECKLESS VIOLATION. If the commission finds that a telecommunications utility has repeatedly and recklessly violated the commission's telecommunications utility selection rules, the commission may, if consistent with the public interest, suspend, restrict, deny, or revoke the registration or certificate, including an amended certificate, of the telecommunications utility and, by taking that action, deny the telecommunications utility the right to provide service in this state.

Sec. 55.307. DECEPTIVE OR FRAUDULENT PRACTICE. The commission may prohibit a utility from engaging in a deceptive or fraudulent practice, including a marketing practice, involving the selection of a customer's telecommunications utility. The commission may define deceptive and fraudulent practices to which this section applies.

Sec. 55.308. CONSISTENCY WITH FEDERAL LAW. Notwithstanding any other provision of this subchapter, rules adopted by the commission under this subchapter shall be consistent with applicable federal laws and rules.

SECTION 21. Section 56.021, Utilities Code, as amended by Section 18.08, **SB 1368**, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

Sec. 56.021. UNIVERSAL SERVICE FUND ESTABLISHED. The commission shall adopt and enforce rules requiring local exchange companies to establish a universal service fund to:

(1) assist telecommunications providers [~~local exchange companies~~] in providing basic local telecommunications service at reasonable rates in high cost rural areas;

(2) reimburse telecommunications providers [~~local exchange companies~~] for revenue lost by providing tel-assistance service under Subchapter C;

(3) reimburse the telecommunications carrier that provides the statewide telecommunications relay access service under Subchapter D;

(4) finance the specialized telecommunications device assistance program established under Subchapter E; [~~and~~]

(5) reimburse the department, the Texas Commission for the Deaf and Hard of Hearing, and the commission for costs incurred in implementing this chapter and Chapter 57; and

(6) reimburse a telecommunications carrier providing lifeline service as provided by 47 C.F.R. Part 54, Subpart E, as amended.

SECTION 22. Sections 56.023 and 56.024, Utilities Code, are amended to read as follows:

Sec. 56.023. COMMISSION POWERS AND DUTIES. (a) The commission shall:

(1) in a manner that assures reasonable rates for basic local telecommunications service, adopt eligibility criteria and review procedures, including a method for administrative review, the commission finds necessary to fund the universal service fund and make distributions from that fund;

(2) determine which telecommunications providers [~~local exchange companies~~] meet the eligibility criteria;

(3) determine the amount of and approve a procedure for reimbursement to telecommunications providers [~~local exchange companies~~] of revenue lost in providing tel-assistance service under Subchapter C;

(4) establish and collect fees from the universal service fund necessary to recover the costs the department and the commission incur in administering this chapter and Chapter 57; and

(5) approve procedures for the collection and disbursal of the revenue of the universal service fund.

(b) The eligibility criteria must require that a telecommunications provider [~~local exchange company~~], in compliance with the commission's quality of service requirements:

(1) offer service to each consumer within the company's certificated area; and

(2) render continuous and adequate service within the company's certificated area.

(c) The commission shall adopt rules for the administration of the universal service fund and may act as necessary and convenient to administer the fund.

Sec. 56.024. REPORTS; CONFIDENTIALITY. (a) The commission may require a [~~local exchange company or another~~] telecommunications provider to provide a report or information necessary to assess contributions and disbursements to the universal service fund.

(b) A report or information is confidential and not subject to disclosure under Chapter 552, Government Code.

SECTION 23. Section 56.026, Utilities Code, is amended to read as follows:

Sec. 56.026. UNIVERSAL SERVICE FUND DISBURSEMENTS. (a) A revenue requirement showing is not required for a disbursement from the universal service fund under this subchapter.

(b) The commission shall make each disbursement from the universal service fund promptly and efficiently so that a telecommunications provider [~~or local exchange company~~] does not experience an unnecessary cash-flow change as a result of a change in governmental policy.

(c) Notwithstanding any other provision of this title, if an electing company reduces rates in conjunction with receiving disbursements from the universal service fund, the commission may not reduce the amount of those disbursements, except that:

(1) if a local end user customer of the electing company switches to another local service provider that serves the customer entirely through the use of its own facilities and not partially or solely through the use of unbundled network elements, the electing company's disbursement may be reduced by the amount attributable to that customer under Section 56.021(1); or

(2) if a local end user customer of the electing company switches to another local service provider, and the new local service provider serves the customer partially or solely through the use of unbundled network elements provided by the electing company, the electing company's disbursement attributable to that customer under Section 56.021(1) may be reduced only if the commission establishes an equitable allocation formula for the disbursement.

(d) Any reductions in switched access service rates for local exchange companies with more than 125,000 access lines in service in this state on December 31, 1998, that are made in accordance with this section shall be proportional, based on equivalent minutes of use, to reductions in intraLATA toll rates, and those reductions shall be offset by equal disbursements from the universal service fund under Section 56.021(1). To the extent that the disbursements from the universal service fund under Section 56.021(1) for small and rural local exchange companies are used to decrease the implicit support in intraLATA toll and switched access rates, the decrease shall be made in a competitively neutral manner.

SECTION 24. Subchapter B, Chapter 56, Utilities Code, is amended by adding Section 56.028 to read as follows:

Sec. 56.028. UNIVERSAL SERVICE FUND REIMBURSEMENT FOR CERTAIN INTRALATA SERVICE. On request of an incumbent local exchange company that is not an electing company under Chapters 58 and 59, the commission shall provide reimbursement through the universal service fund for reduced rates for intraLATA interexchange high capacity (1.544 Mbps) service for entities described in Section 58.253(a). The amount of reimbursement shall be the difference between the company's tariffed rate for that service as of January 1, 1998, and the lowest rate offered for that service by any local exchange company electing incentive regulation under Chapter 58.

SECTION 25. Section 56.071, Utilities Code, is amended to read as follows:

Sec. 56.071. TEL-ASSISTANCE SERVICE REQUIREMENTS. (a) The commission shall adopt and enforce rules requiring a local exchange company to establish a telecommunications service assistance program to provide a reduction in the cost of telecommunications service to each eligible consumer in the company's certificated area. The reduction must be a reduction on the consumer's telephone bill.

(b) In addition to local exchange companies, this subchapter applies to telecommunications providers that receive universal service fund support in accordance with the commission's universal service fund rules, and any reference to or requirement imposed on local exchange companies in this subchapter shall also apply to those telecommunications providers.

(c) Except as provided by Section 56.075(b), the reduction allowed by the program is 65 percent of the applicable tariff rate for the service provided.

(d) [~~(c)~~] The program is named "tel-assistance service."

SECTION 26. Section 56.072, Utilities Code, is amended by adding Subsection (d) to read as follows:

(d) The commission shall adopt rules providing for automatic enrollment to receive tel-assistance service for eligible consumers. The department, on request of the commission, shall assist in the adoption and implementation of those rules. The commission and the department shall enter into a memorandum of understanding establishing the respective duties of the commission and the department in relation to the automatic enrollment.

SECTION 27. Subchapter C, Chapter 56, Utilities Code, is amended by adding Section 56.079 to read as follows:

Sec. 56.079. RELATIONSHIP TO OTHER SERVICES. (a) The commission shall adopt rules prohibiting a telecommunications provider from discontinuing local exchange telephone service to a consumer who receives tel-assistance service because of nonpayment by the consumer of charges for other services billed by the provider, including long distance service.

(b) A telecommunications provider may block a tel-assistance service participant's access to all long distance service except toll-free numbers when the participant owes an outstanding amount for that service. The telecommunications provider shall remove the block without additional cost to the participant on payment of the outstanding amount.

(c) A telecommunications provider shall offer a consumer who applies for or receives tel-assistance service the option of blocking all toll calls or, if technically capable, placing a limit on the amount of toll calls. The provider may not charge the consumer an administrative charge or other additional amount for the blocking service.

SECTION 28. Subchapter A, Chapter 58, Utilities Code, is amended by adding Section 58.003 to read as follows:

Sec. 58.003. CUSTOMER-SPECIFIC CONTRACTS. (a) Notwithstanding any other provision of this chapter, an electing company may not offer in an exchange a service or an appropriate subset of a service listed in Sections 58.051(a)(1)-(4) or Sections 58.151(1)-(4) in a manner that results in a customer-specific contract, unless the other party to the contract is a federal, state, or local governmental entity, until the earlier of September 1, 2005, or the date on which the commission finds that at least 40 percent of the total access lines for that service or appropriate subset of that service in that exchange are served by competitive alternative providers that are not affiliated with the electing company.

(b) In addition to the requirements prescribed by Subsection (a), an electing company serving fewer than five million access lines must also notify the commission of the company's binding commitment to make the following infrastructure improvements not later than September 1, 2001:

(1) install Common Channel Signaling 7 capability in each central office; and

(2) connect all of the company's serving central offices to their respective LATA tandem central offices with optical fiber or equivalent facilities.

(c) The commission by rule shall prescribe appropriate subsets of services.

(d) An electing company may file with the commission a request for a finding under this section. The filing must include information sufficient for the commission to perform a review and evaluation in relation to the particular exchange and the particular service or appropriate subset of a service for which the electing company wants to offer customer-specific contracts. The commission must grant or deny the request not later than the 60th day after the date the electing company files the request.

(e) The commitments described by Subsection (b) do not apply to exchanges of the company sold or transferred before, or for which contracts for sale or transfer are pending on, September 1, 2001. In the case of exchanges for which contracts for sale or transfer are pending as of March 1, 2001, where the purchaser withdrew or defaulted before September 1, 2001, the company shall have one year from the date of withdrawal or default to comply with the commitments.

(f) This section does not preclude an electing company from offering a customer-specific contract to the extent allowed by this title as of August 31, 1999.

SECTION 29. Section 58.021, Utilities Code, is amended to read as follows:

Sec. 58.021. ELECTION. (a) An incumbent local exchange company may elect to be subject to incentive regulation and to make the corresponding infrastructure commitment under this chapter by notifying the commission in writing of its election.

(b) The notice must include a statement that the company agrees to:

(1) limit until September 1, 2005, [~~for four years~~] any increase in a rate the company charges for basic network services as prescribed by Subchapter C; and

(2) fulfill the infrastructure commitment prescribed by Subchapters F and G.

(c) Except as provided in Subsection (d), an election under this chapter remains in effect until the legislature eliminates the incentive regulation authorized by this chapter and Chapter 59.

(d) The commission may allow an electing company serving fewer than five million access lines to withdraw the company's election under this chapter:

(1) on application by the company; and

(2) only for good cause.

(e) In this section, "good cause" includes only matters beyond the control of the company.

SECTION 30. Section 58.023, Utilities Code, is amended to read as follows:

Sec. 58.023. SERVICE CLASSIFICATION. On election, the services provided by an electing company are classified into two [~~three~~] categories:

(1) basic network services governed by Subchapter C; and

(2) nonbasic [~~discretionary services governed by Subchapter D; and~~

[~~(3) competitive~~] services governed by Subchapter E.

SECTION 31. Section 58.024, Utilities Code, is amended to read as follows:

Sec. 58.024. SERVICE RECLASSIFICATION. (a) The commission may reclassify a[~~:~~

[~~(1)~~] basic network service as a nonbasic [~~discretionary or competitive~~] service[~~; or~~

[~~(2) discretionary service as a competitive service~~].

(b) The commission shall establish criteria for determining whether a service should be reclassified. The criteria must include consideration of the:

(1) availability of the service from other providers;

(2) [~~proportion of the market that receives the service;~~

[~~(3)~~] effect of the reclassification on service subscribers; and

(3) [~~(4)~~] nature of the service.

(c) The commission may not reclassify a service until:

(1) each competitive safeguard prescribed by Subchapters B-H, Chapter 60, is fully implemented; or

(2) for a company that serves more than five million access lines in this state, the date on which the Federal Communications Commission determines in accordance with 47 U.S.C. Section 271 that the company or any of its affiliates may enter the interLATA telecommunications market in this state.

(d) The commission may reclassify a service subject to the following conditions:

(1) the electing company must file a request for a service reclassification including information sufficient for the commission to perform a review and evaluation under Subsection (b);

(2) the commission must grant or deny the request not later than the 60th day after the date the electing company files the request for service reclassification; and

(3) there is a rebuttable presumption that the request for service reclassification by the electing company should be granted if the commission finds that there is a competitive alternative provider serving customers through means other than total service resale.

SECTION 32. Section 58.028, Utilities Code, is amended to read as follows:

Sec. 58.028. REVIEW AND REPORT OF EFFECTS OF ELECTION. (a) Not later than January 1, 2004 [~~2000~~], the commission shall begin a review and evaluation of each company that elects under this chapter or Chapter 59.

(b) The review must include an evaluation of the effects of the election, including:

(1) consumer benefits;

(2) impact of competition;

(3) infrastructure investments; and

(4) quality of service.

(c) The commission shall file a report with the legislature not later than January 1, 2005 [~~2001~~]. The report must include the commission's recommendations as to whether the incentive regulation provided by this chapter and Chapter 59 should be extended, modified, eliminated, or replaced with another form of regulation.

(d) This section expires September 1, 2005 [~~2001~~].

SECTION 33. Section 58.051, Utilities Code, is amended to read as follows:

Sec. 58.051. SERVICES INCLUDED. (a) Unless reclassified under Section 58.024, the following services are basic network services:

(1) flat rate residential [~~and business~~] local exchange telephone service, including primary directory listings and the receipt of a directory and any applicable mileage or zone charges;

(2) residential tone dialing service;

(3) lifeline and tel-assistance service;

(4) service connection for basic residential services;

(5) direct inward dialing service for basic residential services;

(6) private pay telephone access service;

(7) call trap and trace service;

(8) access for all residential and business end users to 911 service provided by a local authority and access to dual party relay service;

(9) [~~switched access service;~~

[~~(10) interconnection to competitive providers;~~

[~~(11)~~] mandatory residential extended area service arrangements;

(10) [~~(12)~~] mandatory residential extended metropolitan service or other mandatory residential toll-free calling arrangements; and

(11) residential call waiting service

[~~(13) interconnection for commercial mobile service providers;~~

[~~(14) directory assistance; and~~

[~~(15) "1-plus" intraLATA message toll service~~].

(b) Electing companies shall offer each basic network service as a separately tariffed service in addition to any packages or other pricing flexibility offerings that include those basic network services.

SECTION 34. Sections 58.054 and 58.055, Utilities Code, are amended to read as follows:

Sec. 58.054. RATES CAPPED. (a) As a condition of election under this chapter, an electing company shall commit to not increasing a rate for a basic network service on or before the fourth anniversary of its election date.

(b) The rates an electing company may charge on or before that fourth anniversary are the rates charged by the company on June 1, 1995, or, for a company that elects under this chapter after September 1, 1999, the rates charged on the date of its election, without regard to a proceeding pending under:

(1) Section 15.001;

(2) Subchapter D, Chapter 53; or

(3) Subchapter G, Chapter 2001, Government Code.

(c) Notwithstanding Subsections (a) and (b), the cap on the rates for basic network services for a company electing under this chapter may not expire before September 1, 2005.

Sec. 58.055. RATE ADJUSTMENT BY COMPANY. (a) An electing company may increase a rate for a basic network service during the election [~~four-year~~] period prescribed by Section 58.054 only:

(1) with commission approval that the proposed change is included in Section 58.056, 58.057, or 58.058; and

(2) as provided by Sections 58.056, 58.057, 58.058, and 58.059.

(b) Notwithstanding Subchapter F, Chapter 60, an electing company may, on its own initiative, decrease a rate for a basic network service during the electing [~~four-year~~] period.

(c) [~~The company may decrease the rate for switched access service to an amount above the service's long run incremental cost.~~

[~~(d)~~] The company may decrease the rate for a basic local telecommunications service [~~other than switched access~~] to an amount above the service's appropriate cost. If the company has been required to perform or has elected to perform a long run incremental cost study, the appropriate cost for the service is the service's long run incremental cost.

SECTION 35. Section 58.060, Utilities Code, is amended to read as follows:

Sec. 58.060. RATE ADJUSTMENT AFTER CAP EXPIRATION. After the expiration of the [~~four-year~~] period during which the rates for basic network services are capped as prescribed by Section 58.054 [~~expires~~], an electing company may increase a rate for a basic network service only:

(1) with commission approval subject to this title; and

(2) to the extent consistent with achieving universal affordable service.

SECTION 36. Subchapter C, Chapter 58, Utilities Code, is amended by adding Section 58.063 to read as follows:

Sec. 58.063. PRICING AND PACKAGING FLEXIBILITY. (a) Notwithstanding Section 58.052(b) or Subchapter F, Chapter 60, an electing company may exercise pricing flexibility for basic network services, including the packaging of basic network services with any other regulated or unregulated service or any service of an affiliate. The company may exercise pricing flexibility in accordance with this section 10 days after providing an informational notice to the commission, to the office, and to any person who holds a certificate of operating authority in the electing company's certificated area or areas or who has an effective interconnection agreement with the electing company.

(b) An electing company shall set the price of a package of services containing basic network services and nonbasic services at any level at or above the lesser of:

(1) the sum of the long run incremental costs of any basic network services and nonbasic services contained in the package; or

(2) the sum of the tariffed prices of any basic network services contained in the package and the long run incremental costs of nonbasic services contained in the package.

(c) Except as provided by Section 58.003, an electing company may flexibly price a package that includes a basic network service in any manner provided by Section 51.002(7).

SECTION 37. Subchapter E, Chapter 58, Utilities Code, is amended to read as follows:

SUBCHAPTER E. NONBASIC [~~COMPETITIVE~~] SERVICES

Sec. 58.151. SERVICES INCLUDED. The following services are classified as nonbasic [~~competitive~~] services:

(1) flat rate business local exchange telephone service, including primary directory listings and the receipt of a directory, and any applicable mileage or zone charges, except that the prices for this service shall be capped until September 1, 2005, at the prices in effect on September 1, 1999;

(2) business tone dialing service, except that the prices for this service shall be capped until September 1, 2005, at the prices in effect on September 1, 1999;

(3) service connection for all business services, except that the prices for this service shall be capped until September 1, 2005, at the prices in effect on September 1, 1999;

(4) direct inward dialing for basic business services, except that the prices for this service shall be capped until September 1, 2005, at the prices in effect on September 1, 1999;

(5) "1-plus" intraLATA message toll services;

(6) 0+ and 0- operator services;

(7) call waiting, call forwarding, and custom calling, except that:

(A) residential call waiting service shall be classified as a basic network service; and

(B) for an electing company subject to Section 58.301, prices for residential call forwarding and other custom calling services shall be capped at the prices in effect on September 1, 1999, until the electing company implements the reduction in switched access rates described by Section 58.301(2);

(8) call return, caller identification, and call control options, except that, for an electing company subject to Section 58.301, prices for residential call return, caller identification, and call control options shall be capped at the prices in effect on September 1, 1999, until the electing company implements the reduction in switched access rates described by Section 58.301(2);

(9) central office based PBX-type services;

(10) billing and collection services, including installment billing and late payment charges for customers of the electing company;

(11) integrated services digital network (ISDN) services, except that prices for Basic Rate Interface (BRI) ISDN services, which comprise up to two 64 Kbps B-channels and one 16 Kbps D-channel, shall be capped until September 1, 2005, at the prices in effect on September 1, 1999;

(12) new services;

(13) directory assistance services, except that an electing company shall provide to a residential customer the first three directory assistance inquiries in a monthly billing cycle at no charge;

(14) services described in the WATS tariff as the tariff existed on January 1, 1995;

(15) [~~(2)~~] 800 and foreign exchange services;

(16) [~~(3)~~] private line service;

(17) [~~(4)~~] special access service;

(18) [~~(5)~~] services from public pay telephones;

(19) [~~(6)~~] paging services and mobile services (IMTS);

(20) [~~(7)~~] 911 services provided to a local authority that are available from another provider [~~premises equipment~~];

(21) [~~(8)~~] speed dialing; [~~and~~]

(22) [~~(9)~~] three-way calling; and

(23) all other services subject to the commission's jurisdiction that are not specifically classified as basic network services in Section 58.051, except that nothing in this section shall preclude a customer from subscribing to a local flat rate residential or business line for a computer modem or a facsimile machine.

Sec. 58.152. PRICES. (a) An electing company may set the price for any nonbasic [~~a competitive~~] service at any level above the lesser of the:

(1) service's long run incremental cost in accordance with the imputation rules prescribed by or under Subchapter D, Chapter 60; or

(2) price for the service in effect on September 1, 1999.

(b) Subject to Section 51.004, an electing [~~Subject to the requirements of Sections 60.001 and 60.002, the~~] company may use pricing flexibility for a nonbasic [~~competitive~~] service. Pricing flexibility includes all pricing arrangements included in the definition of "pricing flexibility" prescribed by Section 51.002 and includes packages that include basic network services [~~(c) Notwithstanding Subsection (a) or (b), the company may not increase the price of a competitive service in a geographic area in which that service or a functionally equivalent service is not readily available from another provider~~].

Sec. 58.153. NEW SERVICES. (a) Subject to the pricing conditions prescribed by Section 58.152(a), an electing company may introduce a new service 10 days after providing an informational notice to the commission, to the office, and to any person who holds a certificate of operating authority in the electing company's certificated area or areas or who has an effective interconnection agreement with the electing company.

(b) An electing company serving more than five million access lines in this state shall provide notice to any person who holds a certificate of operating authority in the electing company's certificated area or areas or who has an effective interconnection agreement with the electing company of any changes in the generally available prices and terms under which the electing company offers basic or nonbasic telecommunications services regulated by the commission at retail rates to subscribers that are not telecommunications providers. Changes requiring notice under this subsection include the introduction of any new nonbasic services, any new features or functions of basic or nonbasic services, promotional offerings of basic or nonbasic services, or the discontinuation of then-current features or services. The electing company shall provide the notice:

(1) if the electing company is required to give notice to the commission, at the same time the company provides that notice; or

(2) if the electing company is not required to give notice to the commission, at least 45 days before the effective date of a price change or 90 days before the effective date of a change other than a price change, unless the commission determines that the notice should not be given.

(c) An affected person, the office on behalf of residential or small commercial customers, or the commission may file a complaint at the commission challenging whether the pricing by an incumbent local exchange company of a new service is in compliance with Section 58.152(a). The commission shall allow the company to continue to provide the service while the complaint is pending.

(d) If a complaint is filed under Subsection (c), the electing company has the burden of proving that the company set the price for the new service in accordance with Section 58.152(a). If the complaint is finally resolved in favor of the complainant, the company:

(1) shall, not later than the 10th day after the date the complaint is finally resolved, amend the price of the service as necessary to comply with the final resolution; or

(2) may, at the company's option, discontinue the service.

(e) The notice requirement prescribed by Subsection (b) expires September 1, 2003.

SECTION 38. Subchapter E, Chapter 58, Utilities Code, is amended by adding Section 58.155 to read as follows:

Sec. 58.155. INTERCONNECTION. Because interconnection to competitive providers and interconnection for commercial mobile service providers are subject to the requirements of Sections 251 and 252, Communications Act of 1934, as amended (47 U.S.C. Sections 251 and 252), as amended, and Federal Communications Commission rules, including the commission's authority to arbitrate issues, interconnection is not addressed in this subchapter or Subchapter B.

SECTION 39. Chapter 58, Utilities Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. SWITCHED ACCESS SERVICES

Sec. 58.301. SWITCHED ACCESS RATE REDUCTION. An electing company with greater than five million access lines in this state shall reduce its switched access rates on a combined originating and terminating basis as follows:

(1) the electing company shall reduce switched access rates on a combined originating and terminating basis in effect on September 1, 1999, by one cent a minute; and

(2) the electing company shall reduce switched access rates on a combined originating and terminating basis by an additional two cents a minute on the earlier of:

(A) July 1, 2000; or

(B) the date the electing company, or its affiliate formed in compliance with 47 U.S.C. Section 272, as amended, actually begins providing interLATA services in this state in accordance with the authorization required by 47 U.S.C. Section 271, as amended.

Sec. 58.302. SWITCHED ACCESS RATE CAP. (a) An electing company may not increase the per minute rates for switched access services on a combined originating and terminating basis above the lesser of:

(1) the rates for switched access services charged by that electing company on September 1, 1999, as may be further reduced on implementation of the universal service fund under Chapter 56; or

(2) the applicable rate described by Section 58.301 as may be further reduced on implementation of the universal service fund under Chapter 56.

(b) Notwithstanding Subchapter F, Chapter 60, but subject to Section 60.001, an electing company may, on its own initiative, decrease a rate charged for switched access service to any amount above the long run incremental cost of the service.

Sec. 58.303. SWITCHED ACCESS CHARGE STUDY. (a) Not later than November 1, 1999, the commission shall begin a review and evaluation of the rates for intrastate switched access service. The review shall include an evaluation of at least the following issues:

(1) whether alternative rate structures for recovery of switched access revenues are in the public interest and competitively neutral; and

(2) whether disparities in rates for switched access service between local exchange companies are in the public interest.

(b) The commission shall file a report with the legislature not later than January 1, 2001. The report must include the commission's recommendations on the issues reviewed and evaluated.

(c) This section expires September 1, 2001.

SECTION 40. Section 59.021, Utilities Code, is amended by adding Subsection (c) to read as follows:

(c) A company electing under this chapter may renew the election for successive two-year periods. An election that is renewed under this subsection remains in effect until the earlier of the date that:

(1) the election expires because it was not renewed;

(2) the commission allows the company to withdraw its election under Section 59.022; or

(3) the legislature eliminates the incentive regulation authorized by this chapter and Chapter 58.

SECTION 41. Section 59.024, Utilities Code, is amended to read as follows:

Sec. 59.024. RATE CHANGES. (a) Except for the charges permitted under Subchapter C, Chapter 55, Subchapter B, Chapter 56, and Section 55.024, an electing company may not, [~~on or~~] before the end of the company's election period under this chapter [~~sixth anniversary of its election date~~], increase a rate previously established for that company under this title unless the commission approves the proposed change as authorized under Subsection (c) or (d).

(b) For purposes of Subsection (a), the company's previously established rates are the rates charged by the company on its election date without regard to a proceeding pending under:

(1) Section 15.001;

(2) Subchapter D, Chapter 53; or

(3) Subchapter G, Chapter 2001, Government Code.

(c) The commission, on motion of the electing company or on its own motion, shall adjust prices for services to reflect changes in Federal Communications Commission separations that affect intrastate net income by at least 10 percent.

(d) Notwithstanding Subsection (a), the [~~The~~] commission, on request of the electing company, shall allow a rate group reclassification that results from access line growth.

(e) Section 58.059 applies to a rate change under this section.

SECTION 42. Section 59.025, Utilities Code, is amended to read as follows:

Sec. 59.025. SWITCHED ACCESS RATES. Notwithstanding any other provision of this title, the commission may not, on the commission's own motion, reduce an electing company's rates for switched access services before the expiration of the election [~~six-year~~] period prescribed by Section 59.024, but may approve a reduction proposed by the electing company.

SECTION 43. Subsection (a), Section 59.026, Utilities Code, is amended to read as follows:

(a) On or before the end [~~sixth anniversary~~] of the company's election period [~~date~~], an electing company is not, under any circumstances, subject to:

(1) a complaint or hearing regarding the reasonableness of the company's:

(A) rates;

(B) overall revenues;

(C) return on invested capital; or

(D) net income; or

(2) a complaint that a rate is excessive.

SECTION 44. Subchapter B, Chapter 59, Utilities Code, is amended by adding Sections 59.030, 59.031, and 59.032 to read as follows:

Sec. 59.030. NEW SERVICES. (a) An electing company may introduce a new service 10 days after providing an informational notice to the commission, to the office, and to any person who holds a certificate of operating authority in the electing company's certificated area or areas or who has an effective interconnection agreement with the electing company.

(b) An electing company shall price each new service at or above the service's long run incremental cost. The commission shall allow a company serving fewer than one million access lines to establish a service's long run incremental cost by adopting, at that company's option, the cost studies of a larger company for that service that has been accepted by the commission.

(c) An affected person, the office on behalf of residential or small commercial customers, or the commission may file a complaint at the commission challenging whether the pricing by an electing company of a new service is in compliance with Subsection (b).

(d) If a complaint is filed under Subsection (c), the electing company has the burden of proving that the company set the price for the new service in accordance with the applicable provisions of this subchapter. If the complaint is finally resolved in favor of the complainant, the electing company:

(1) shall, not later than the 10th day after the date the complaint is finally resolved, amend the price of the service as necessary to comply with the final resolution; or

(2) may, at the company's option, discontinue the service.

Sec. 59.031. PRICING AND PACKAGING FLEXIBILITY. (a) Notwithstanding Section 59.027(b) or Subchapter F, Chapter 60, an electing company may exercise pricing flexibility in accordance with this section, including the packaging of any regulated service such as basic local telecommunications service with any other regulated or unregulated service or any service of an affiliate. The electing company may exercise pricing flexibility 10 days after providing an informational notice to the commission, to the office, and to any person who holds a certificate of operating authority in the electing company's certificated area or areas or who has an effective

interconnection agreement with the electing company. Pricing flexibility includes all pricing arrangements included in the definition of "pricing flexibility" prescribed by Section 51.002(7) and includes packaging of regulated services with unregulated services or any service of an affiliate.

(b) An electing company, at the company's option, shall price each regulated service offered separately or as part of a package under Subsection (a) at either the service's tariffed rate or at a rate not lower than the service's long run incremental cost. The commission shall allow a company serving fewer than one million access lines to establish a service's long run incremental cost by adopting, at that company's option, the cost studies of a larger company for that service that have been accepted by the commission.

(c) An affected person, the office on behalf of residential or small commercial customers, or the commission may file a complaint alleging that an electing company has priced a regulated service in a manner that does not meet the pricing standards of this subchapter. The complaint must be filed before the 31st day after the company implements the rate.

Sec. 59.032. CUSTOMER PROMOTIONAL OFFERINGS. (a) An electing company may offer a promotion for a regulated service for not more than 90 days in any 12-month period.

(b) The electing company shall file with the commission a promotional offering that consists of:

(1) waiver of installation charges or service order charges, or both, for not more than 90 days in a 12-month period; or

(2) a temporary discount of not more than 25 percent from the tariffed rate for not more than 60 days in a 12-month period.

(c) An electing company is not required to obtain commission approval to make a promotional offering described by Subsection (b).

(d) An electing company may offer a promotion of any regulated service as part of a package of services consisting of any regulated service with any other regulated or unregulated service or any service of an affiliate.

SECTION 45. Section 60.042, Utilities Code, is amended to read as follows:

Sec. 60.042. PROHIBITED RESALE OR SHARING. (a) A provider of telecommunications service may not impose a restriction on the resale or sharing of a service:

(1) for which the provider is not a dominant provider; or

(2) entitled to regulatory treatment as a nonbasic [~~competitive~~] service under Subchapter E, Chapter 58, if the provider is a company electing regulation under Chapter 58.

(b) An incumbent local exchange company must comply with the resale provisions of 47 U.S.C. Section 251(c)(4), as amended, unless exempted under 47 U.S.C. Section 251(f), as amended.

(c) If a company electing under Chapter 58 offers basic or nonbasic services regulated by the commission to its retail customers as a promotional offering, the electing company shall make those services available for resale by a certificated telecommunications utility on terms that are no less favorable than the terms on which the services are made available to retail customers in accordance with this section. For a promotion with a duration of 90 days or less, the electing company's basic or nonbasic services shall be made available to the certificated telecommunications

utility at the electing company's promotional rate, without an avoided-cost discount. For a promotion with a duration of more than 90 days, the electing company's basic or nonbasic services shall be made available to the certificated telecommunications utility at a rate reflecting the avoided-cost discount, if any, from the promotional rate.

SECTION 46. Subchapter I, Chapter 60, Utilities Code, is amended by adding Sections 60.164 and 60.165 to read as follows:

Sec. 60.164. PERMISSIBLE JOINT MARKETING. Except as prescribed in Chapters 61, 62, and 63, the commission may not adopt any rule or order that would prohibit a local exchange company from jointly marketing or selling its products and services with the products and services of any of its affiliates in any manner permitted by federal law or applicable rules or orders of the Federal Communications Commission.

Sec. 60.165. AFFILIATE RULE. Except as prescribed in Chapters 61, 62, and 63, the commission may not adopt any rule or order that would prescribe for any local exchange company any affiliate rule, including any accounting rule, any cost allocation rule, or any structural separation rule, that is more burdensome than federal law or applicable rules or orders of the Federal Communications Commission. Notwithstanding any other provision in this title, the commission may not attribute or impute to a local exchange company a price discount offered by an affiliate of the local exchange company to the affiliate's customers. This section does not limit the authority of the commission to consider a complaint brought under Subchapter A, Chapter 52, Section 53.003, or this chapter.

SECTION 47. Section 62.074(b), Utilities Code, is amended to read as follows:

(b) An incumbent local exchange company may not:

(1) develop a rate for a telecommunications service or provide a telecommunications service to benefit primarily the company's separate affiliate for the affiliate's video or audio programming unless the rate or service is available to any purchaser without discrimination, except that an incumbent local exchange company may market or sell the audio or video programming products or services provided by the company's separate affiliate without marketing or selling the audio or video programming products or services of a nonaffiliated provider;

(2) provide a telecommunications service for the separate affiliate's audio or video programming in an unreasonably preferential manner;

(3) transfer an asset to the separate affiliate for less than the amount for which the asset is available to a third party in an arm's-length transaction;

(4) have a director, officer, or employee in common with the separate affiliate;

(5) own property in common with the separate affiliate; or

(6) enter into a customer-specific contract with the separate affiliate to provide tariffed telecommunications services unless substantially the same contract terms are generally available to nonaffiliated interests.

SECTION 48. Section 62.108, Utilities Code, is amended to read as follows:

Sec. 62.108. EXPIRATION. This subchapter expires August 31, 2005 [~~1999~~].

SECTION 49. Section 62.136, Utilities Code, is amended to read as follows:

Sec. 62.136. EXPIRATION. This subchapter expires August 31, 2005 [~~1999~~].

SECTION 50. Subtitle C, Title 2, Utilities Code, is amended by adding Chapter 64 to read as follows:

CHAPTER 64. CUSTOMER PROTECTION
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 64.001. CUSTOMER PROTECTION POLICY. (a) The legislature finds that new developments in telecommunications services, as well as changes in market structure, marketing techniques, and technology, make it essential that customers have safeguards against fraudulent, unfair, misleading, deceptive, or anticompetitive business practices and against businesses that do not have the technical and financial resources to provide adequate service.

(b) The purpose of this chapter is to establish customer protection standards and confer on the commission authority to adopt and enforce rules to protect customers from fraudulent, unfair, misleading, deceptive, or anticompetitive practices.

(c) Nothing in this section shall be construed to abridge customer rights set forth in commission rules in effect at the time of the enactment of this chapter.

(d) This chapter does not limit the constitutional, statutory, and common law authority of the office of the attorney general.

Sec. 64.002. DEFINITIONS. In this chapter:

(1) "Billing agent" means any entity that submits charges to the billing utility on behalf of itself or any provider of a product or service.

(2) "Billing utility" means any telecommunications provider, as defined by Section 51.002, that issues a bill directly to a customer for any telecommunications product or service.

(3) "Certificated telecommunications utility" means a telecommunications utility that has been granted either a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority.

(4) "Customer" means any person in whose name telephone service is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity with legal capacity to be billed for telephone service.

(5) "Service provider" means any entity that offers a product or service to a customer and that directly or indirectly charges to or collects from a customer's bill an amount for the product or service on a customer's bill received from a billing utility.

(6) "Telecommunications utility" has the meaning assigned by Section 51.002.

Sec. 64.003. CUSTOMER AWARENESS. (a) The commission shall promote public awareness of changes in telecommunications markets, provide customers with information necessary to make informed choices about available options, and ensure that customers have an adequate understanding of their rights.

(b) The commission shall compile a report on customer service at least once each year showing the comparative customer information from reports given to the commission it deems necessary.

(c) The commission shall adopt and enforce rules to require a certificated telecommunications utility to give clear, uniform, and understandable information to customers about rates, terms, services, customer rights, and other necessary information as determined by the commission.

(d) Customer awareness efforts by the commission shall be conducted in English and Spanish and any other language as necessary.

Sec. 64.004. CUSTOMER PROTECTION STANDARDS. (a) All buyers of telecommunications services are entitled to:

(1) protection from fraudulent, unfair, misleading, deceptive, or anticompetitive practices, including protection from being billed for services that were not authorized or provided;

(2) choice of a telecommunications service provider and to have that choice honored;

(3) information in English and Spanish and any other language as the commission deems necessary concerning rates, key terms, and conditions;

(4) protection from discrimination on the basis of race, color, sex, nationality, religion, marital status, income level, or source of income and from unreasonable discrimination on the basis of geographic location;

(5) impartial and prompt resolution of disputes with a certificated telecommunications utility and disputes with a telecommunications service provider related to unauthorized charges and switching of service;

(6) privacy of customer consumption and credit information;

(7) accuracy of billing;

(8) bills presented in a clear, readable format and easy-to-understand language;

(9) information in English and Spanish and any other language as the commission deems necessary concerning low-income assistance programs and deferred payment plans;

(10) all consumer protections and disclosures established by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.) and the Truth in Lending Act (15 U.S.C. Section 1601 et seq.); and

(11) programs that offer eligible low-income customers an affordable rate package and bill payment assistance programs designed to reduce uncollectible accounts.

(b) The commission may adopt and enforce rules as necessary or appropriate to carry out this section, including rules for minimum service standards for a certificated telecommunications utility relating to customer deposits and the extension of credit, switching fees, termination of service, an affordable rate package, and bill payment assistance programs for low-income customers. The commission may waive language requirements for good cause.

(c) The commission shall request the comments of the office of the attorney general in developing the rules that may be necessary or appropriate to carry out this section.

(d) The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anticompetitive business practices with the office of the attorney general in order to ensure consistent treatment of specific alleged violations.

(e) Nothing in this section shall be construed to abridge customer rights set forth in commission rules in effect at the time of the enactment of this chapter.

SUBCHAPTER B. CERTIFICATION, REGISTRATION, AND REPORTING REQUIREMENTS

Sec. 64.051. ADOPTION OF RULES. (a) The commission shall adopt rules relating to certification, registration, and reporting requirements for a certificated telecommunications utility, all telecommunications utilities that are not dominant carriers, and pay telephone providers.

(b) The rules adopted under Subsection (a) shall be consistent with and no less effective than federal law and may not require the disclosure of highly sensitive competitive or trade secret information.

Sec. 64.052. SCOPE OF RULES. The commission may adopt and enforce rules to:

(1) require certification or registration with the commission as a condition of doing business in this state;

(2) amend certificates or registrations to reflect changed ownership and control;

(3) establish rules for customer service and protection;

(4) suspend or revoke certificates or registrations for repeated violations of this chapter or commission rules, except that the commission may not revoke a certificate of convenience and necessity of a telecommunications utility except as provided by Section 54.008; and

(5) order disconnection of a pay telephone service provider's pay telephones or revocation of certification or registration for repeated violations of this chapter or commission rules.

Sec. 64.053. REPORTS. The commission may require a telecommunications service provider to submit reports to the commission concerning any matter over which it has authority under this chapter.

SUBCHAPTER C. CUSTOMER'S RIGHT TO CHOICE

Sec. 64.101. POLICY. It is the policy of this state that all customers be protected from the unauthorized switching of a telecommunications service provider selected by the customer to provide service.

Sec. 64.102. RULES RELATING TO CHOICE. The commission shall adopt and enforce rules that:

(1) ensure that customers are protected from deceptive practices employed in obtaining authorizations of service and in the verification of change orders, including negative option marketing, sweepstakes, and contests that cause customers to unknowingly change their telecommunications service provider;

(2) provide for clear, easily understandable identification, in each bill sent to a customer, of all telecommunications service providers submitting charges on the bill;

(3) ensure that every service provider submitting charges on the bill is clearly and easily identified on the bill along with its services, products, and charges;

(4) provide that unauthorized changes in service be remedied at no cost to the customer within a period established by the commission;

(5) require refunds or credits to the customer in the event of an unauthorized change; and

(6) provide for penalties for violations of commission rules adopted under this section, including fines and revocation of certificates or registrations, by this action denying the certificated telecommunications utility the right to provide service in this state, except that the commission may not revoke a certificate of convenience and necessity of a telecommunications utility except as provided by Section 54.008.

SUBCHAPTER D. PROTECTION AGAINST UNAUTHORIZED CHARGES

Sec. 64.151. REQUIREMENTS FOR SUBMITTING CHARGES. (a) A service provider or billing agent may submit charges for a new product or service to be billed on a customer's telephone bill on or after the effective date of this section only if:

(1) the service provider offering the product or service has thoroughly informed the customer of the product or service being offered, including all associated charges, and has explicitly informed the customer that the associated charges for the product or service will appear on the customer's telephone bill;

(2) the customer has clearly and explicitly consented to obtain the product or service offered and to have the associated charges appear on the customer's telephone bill and the consent has been verified as provided by Subsection (b); and

(3) the service provider offering the product or service and any billing agent for the service provider:

(A) has provided the customer with a toll-free telephone number the customer may call and an address to which the customer may write to resolve any billing dispute and to answer questions; and

(B) has contracted with the billing utility to bill for products and services on the billing utility's bill as provided by Subsection (c).

(b) The customer consent required by Subsection (a)(2) must be verified by the service provider offering the product or service by authorization from the customer. A record of the customer consent, including verification, must be maintained by the service provider offering the product or service for a period of at least 24 months immediately after the consent and verification have been obtained. The method of obtaining customer consent and verification must include one or more of the following:

(1) written authorization from the customer;

(2) toll-free electronic authorization placed from the telephone number that is the subject of the product or service;

(3) oral authorization obtained by an independent third party; or

(4) any other method of authorization approved by the commission or the Federal Communications Commission.

(c) The contract required by Subsection (a)(3)(B) must include the service provider's name, business address, and business telephone number and shall be maintained by the billing utility for as long as the billing for the products and services continues and for the 24 months immediately following the permanent discontinuation of the billing.

(d) A service provider offering a product or service to be charged on a customer's telephone bill and any billing agent for the service provider may not use any fraudulent, unfair, misleading, deceptive, or anticompetitive marketing practice to obtain customers, including the use of negative option marketing, sweepstakes, and contests.

(e) Unless verification is required by federal law or rules implementing federal law, Subsection (b) does not apply to customer-initiated transactions with a certificated telecommunications provider for which the service provider has the appropriate documentation.

(f) If a service provider is notified by a billing utility that a customer has reported to the billing utility that a charge made by the service provider is unauthorized, the service provider shall cease to charge the customer for the unauthorized product or service.

(g) This section does not apply to message telecommunications services charges that are initiated by dialing 1+, 0+, 0-, 1010XXX, or collect calls and charges for video services if the service provider has the necessary call detail record to establish the billing for the call or service.

Sec. 64.152. RESPONSIBILITIES OF BILLING UTILITY. (a) If a customer's telephone bill is charged for any product or service without proper customer consent or verification, the billing utility, on its knowledge or notification of any unauthorized charge, shall promptly, not later than 45 days after the date of knowledge or notification of the charge:

(1) notify the service provider to cease charging the customer for the unauthorized product or service;

(2) remove any unauthorized charge from the customer's bill;

(3) refund or credit to the customer all money that has been paid by the customer for any unauthorized charge, and if the unauthorized charge is not adjusted within three billing cycles, shall pay interest on the amount of the unauthorized charge;

(4) on the customer's request, provide the customer with all billing records under its control related to any unauthorized charge within 15 business days after the date of the removal of the unauthorized charge from the customer's bill; and

(5) maintain for at least 24 months a record of every customer who has experienced any unauthorized charge for a product or service on the customer's telephone bill and who has notified the billing utility of the unauthorized charge.

(b) A record required by Subsection (a)(5) shall contain for each unauthorized charge:

(1) the name of the service provider that offered the product or service;

(2) any affected telephone numbers or addresses;

(3) the date the customer requested that the billing utility remove the unauthorized charge;

(4) the date the unauthorized charge was removed from the customer's telephone bill; and

(5) the date any money that the customer paid for the unauthorized charges was refunded or credited to the customer.

(c) A billing utility may not:

(1) disconnect or terminate telecommunications service to any customer for nonpayment of an unauthorized charge;

(2) file an unfavorable credit report against a customer who has not paid charges the customer has alleged were unauthorized unless the dispute regarding the unauthorized charge is ultimately resolved against the customer, except that the customer shall remain obligated to pay any charges that are not in dispute, and this subsection does not apply to those undisputed charges; or

(3) interrupt or terminate local exchange service if charges for local exchange service are paid, unless the customer's local exchange service provider:

(A) offers to the customer prepaid local telephone service in accordance with terms and conditions established by the commission; and

(B) provides eligible customers with notice of their eligibility for this service in accordance with commission rules.

Sec. 64.153. RECORDS OF DISPUTED CHARGES. (a) Every service provider shall maintain a record of every disputed charge for a product or service placed on a customer's bill.

(b) The record required under Subsection (a) shall contain for every disputed charge:

(1) any affected telephone numbers or addresses;

(2) the date the customer requested that the billing utility remove the unauthorized charge;

(3) the date the unauthorized charge was removed from the customer's telephone bill; and

(4) the date action was taken to refund or credit to the customer any money that the customer paid for the unauthorized charges.

(c) The record required by Subsection (a) shall be maintained for at least 24 months following the completion of all steps required by Section 64.152(a).

Sec. 64.154. NOTICE. (a) A billing utility shall provide notice of a customer's rights under this section in the manner prescribed by the commission.

(b) Notice of a customer's rights must be provided by mail to each residential and retail business customer within 60 days of the effective date of this section or by inclusion in the publication of the telephone directory next following the effective date of this section. In addition, each billing utility shall send the notice to new customers at the time service is initiated or to any customer at that customer's request.

Sec. 64.155. PROVIDING COPY OF RECORDS. A billing utility shall provide a copy of records maintained under Sections 64.151(c), 64.152, and 64.154 to the commission staff on request. A service provider shall provide a copy of records maintained under Sections 64.151(b) and 64.153 to the commission on request.

Sec. 64.156. VIOLATIONS. (a) If the commission finds that a billing utility violated this subchapter, the commission may implement penalties and other enforcement actions under Chapter 15.

(b) If the commission finds that any other service provider or billing agent subject to this subchapter has violated this subchapter or has knowingly provided false information to the commission on matters subject to this subchapter, the commission may enforce the provisions of Chapter 15 against the service provider or billing agent as if it were regulated by the commission.

(c) Neither the authority granted under this section nor any other provision of this subchapter shall be construed to grant the commission jurisdiction to regulate service providers or billing agents who are not otherwise subject to commission regulation, other than as specifically provided by this chapter.

(d) If the commission finds that a billing utility or service provider repeatedly violates this subchapter, the commission may, if the action is consistent with the public interest, suspend, restrict, or revoke the registration or certificate of the telecommunications service provider, by this action denying the telecommunications service provider the right to provide service in this state, except that the commission may not revoke a certificate of convenience and necessity of a telecommunications utility except as provided by Section 54.008.

(e) If the commission finds that a service provider or billing agent has repeatedly violated any provision of this subchapter, the commission may order the billing utility to terminate billing and collection services for that service provider or billing agent.

(f) Nothing in this subchapter shall be construed to preclude a billing utility from taking action on its own to terminate or restrict its billing and collection services.

Sec. 64.157. DISPUTES. (a) The commission may resolve disputes between a retail customer and a billing utility, service provider, or telecommunications utility.

(b) In exercising its authority under Subsection (a), the commission may:

(1) order a billing utility or service provider to produce information or records;

(2) require that all contracts, bills, and other communications from a billing utility or service provider display a working toll-free telephone number that customers may call with complaints and inquiries;

(3) require a billing utility or service provider to refund or credit overcharges or unauthorized charges with interest if the billing utility or service provider has failed to comply with commission rules or a contract with the customer;

(4) order appropriate relief to ensure that a customer's choice of a telecommunications service provider is honored;

(5) require the continuation of service to a residential or small commercial customer while a dispute is pending regarding charges the customer has alleged were unauthorized; and

(6) investigate an alleged violation.

(c) The commission shall adopt procedures for the resolution of disputes in a timely manner, which in no event shall exceed 60 days.

Sec. 64.158. CONSISTENCY WITH FEDERAL LAW. Rules adopted by the commission under this subchapter shall be consistent with and not more burdensome than applicable federal laws and rules.

SECTION 51. Section 55.012, Utilities Code, as added by this Act, takes effect March 1, 2000.

SECTION 52. The following provisions of the Utilities Code are repealed:

(1) Section 58.062; and

(2) Subchapter D, Chapter 58.

SECTION 53. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Floor Amendment No. 1

Amend **CSSB 560** (House Committee Report) as follows:

(1) In Section 54.102(e), Utilities Code, as added by SECTION 15 of the bill (page 14, lines 8-10), strike "customer-specific contracts so long as the affiliated company that is the incumbent local exchange company may not provide customer-specific contracts" and substitute "any service listed in Sections 58.051(a)(1)-(4) or Sections 58.151(1)-(4), or any subset of those services, in a manner that results in a customer-specific contract so long as the affiliated company that is the incumbent local exchange company may not provide those services or subsets of services in a manner that results in a customer-specific contract".

(2) In Section 55.015(a), Utilities Code, as added by SECTION 19 of the bill (page 24, line 27), strike "discontinuing local exchange" and substitute "discontinuing basic local exchange".

(3) In Section 58.003(a), Utilities Code, as added by SECTION 28 of the bill (page 36, lines 19 and 20), strike "a service or an appropriate subset of a service listed" and substitute "a service, or an appropriate subset of a service, listed".

Floor Amendment No. 2

Amend **CSSB 560** by striking SECTION 47 of the bill (page 59, line 9, through page 60, line 7), and renumbering subsequent SECTIONS accordingly.

Floor Amendment No. 3

Amend **CSSB 560** as follows:

On page 11, insert the following at the end of line 1:

"Within six months following each reduction in intrastate switched access rates under this title, each telecommunications utility subject to this section shall file a

sworn affidavit stating that the per minute rates it charges under its basic rate schedule have been reduced to reflect the per minute reduction in switched access rates."

Floor Amendment No. 4

Amend the Burnam amendment to **CSSB 560** (page 3 of the packet) by striking the text of the amendment and substituting the following:

Amend **CSSB 560** by striking Subsection (b), Section 52.112, Utilities Code, as added by SECTION 12 of the bill (House Committee Report page 10, line 25 through page 11, line 2), and substituting the following:

(b) Within six months following each reduction in intrastate switched access rates under this title, each telecommunications utility subject to this section shall file with the commission a sworn affidavit confirming that the utility has reduced the per minute rates it charges under its basic rate schedule to reflect the per minute reduction in intrastate switched access rates.

Amendment No. 5

Amend **CSSB 560**, Section 55.013(c)(1), page 22, line 12 by striking ", at the request and expense of a long distance service provider,"

Floor Amendment No. 6

Amend the Turner amendment to **CSSB 560** (page 4 of the packet) by adding a new item to the amendment to read as follows:

( ) In Section 55.013, Utilities Code, as added by SECTION 17 of the bill (House Committee Report), page 23, between lines 1 and 2), insert a new Subsection (e) to read as follows:

(e) A provider of basic local exchange telecommunications service shall comply with the requirements of this section not later than March 1, 2000.

Floor Amendment No. 7

Amend **CSSB 560** (House committee report) as follows:

(1) Strike Section 21 of the bill (page 30, line 16, through page 31, line 11) and substitute:

SECTION 21. Section 56.021, Utilities Code, as amended by Section 18.08, **SB 1368**, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

Sec. 56.021. UNIVERSAL SERVICE FUND ESTABLISHED. The commission shall adopt and enforce rules requiring local exchange companies to establish a universal service fund to:

(1) assist telecommunications providers [~~local exchange companies~~] in providing basic local telecommunications service at reasonable rates in high cost rural areas;

(2) reimburse telecommunications providers [~~local exchange companies~~] for revenue lost by providing tel-assistance service under Subchapter C;

(3) reimburse the telecommunications carrier that provides the statewide telecommunications relay access service under Subchapter D;

(4) finance the specialized telecommunications [~~device~~] assistance program established under Subchapter E; [~~and~~]

(5) reimburse the department, the Texas Commission for the Deaf and Hard of Hearing, and the commission for costs incurred in implementing this chapter and Chapter 57; and

(6) reimburse a telecommunications carrier providing lifeline service as provided by 47 C.F.R. Part 54, Subpart E, as amended.

(2) Between Sections 27 and 28 of the bill (page 36, between lines 14 and 15) insert:

SECTION 28. Subchapter D, Chapter 56, Utilities Code, is amended by adding Section 56.1085 to read as follows:

Sec. 56.1085. SPECIAL FEATURES FOR RELAY ACCESS SERVICE. (a) The commission may contract for a special feature for the state's telecommunications relay access service if the commission determines:

(1) the feature will benefit the communication of persons with an impairment of hearing or speech;

(2) installation of the feature will be of benefit to the state; and

(3) the feature will make the relay access service available to a greater number of users.

(b) If the carrier selected to provide the telecommunications relay access service under Section 56.108 is unable to provide the special feature at the best value to the state, the commission may make a written award of a contract for a carrier to provide the special feature to the telecommunications carrier whose proposal is most advantageous to the state, considering:

(1) the factors provided by Section 56.108(b); and

(2) the past performance, demonstrated capability, and experience of the carrier.

(c) The commission shall consider each proposal in a manner that does not disclose the contents of the proposal to a telecommunications carrier making a competing proposal.

(d) The commission's evaluation of a telecommunications carrier's proposal shall include the considerations provided by Section 56.108(d).

SECTION 29. Section 56.109(a), Utilities Code, is amended to read as follows:

(a) The telecommunications carrier selected to provide the telecommunications relay access service under Section 56.108 or the carrier selected to provide a special feature for [~~that provides~~] the telecommunications relay access service under Section 56.1085 shall be compensated at rates and on terms provided by the carrier's contract with the commission.

SECTION 30. Subsection (a), Section 56.110, Utilities Code, as amended by Section 18.08, **SB 1368**, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

(a) An advisory committee to assist the commission in administering this subchapter is composed of the following persons appointed by the commission:

(1) two persons with disabilities that impair the ability to effectively access the telephone network other than disabilities described by Subdivisions (2)-(7);

(2) one deaf person recommended by the Texas Deaf Caucus;

(3) [~~(2)~~] one deaf person recommended by the Texas Association of the Deaf;

(4) [~~(3)~~] one person with a hearing impairment recommended by Self-Help for the Hard of Hearing;

(5) [~~(4)~~] one person with a hearing impairment recommended by the American Association of Retired Persons;

(6) [~~(5)~~] one deaf and blind person recommended by the Texas Deaf/Blind Association;

(7) [~~(6)~~] one person with a speech impairment and one person with a speech and hearing impairment recommended by the Coalition of Texans with Disabilities;

(8) [~~(7)~~] two representatives of telecommunications utilities, one representing a nonlocal exchange utility and one representing a local exchange company, chosen from a list of candidates provided by the Texas Telephone Association;

(9) [~~(8)~~] two persons, at least one of whom is deaf, with experience in providing relay services recommended by the Texas Commission for the Deaf and Hard of Hearing; and

(10) [~~(9)~~] two public members recommended by organizations representing consumers of telecommunications services.

SECTION 31. Section 56.111, Utilities Code, as amended by Section 18.08, **SB 1368**, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

Sec. 56.111. ADVISORY COMMITTEE DUTIES. The advisory committee shall:

(1) monitor the establishment, administration, and promotion of the statewide telecommunications relay access service;

(2) advise the commission in pursuing a service that meets the needs of persons with an impairment of hearing or speech in communicating with other telecommunications services users; and

(3) advise the commission and the Texas Commission for the Deaf and Hard of Hearing, at the request of either commission, regarding any issue related to the specialized telecommunications [~~device~~] assistance program established under Subchapter E, including:

(A) devices or services suitable to meet the needs of persons with disabilities [~~the hearing-impaired and speech-impaired~~] in communicating with other users of telecommunications services; and

(B) oversight and administration of the program.

SECTION 32. The heading to Subchapter E, Chapter 56, Utilities Code, as added by Section 18.08, **SB 1368**, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

SUBCHAPTER E. SPECIALIZED TELECOMMUNICATIONS [~~DEVICE~~] ASSISTANCE PROGRAM

SECTION 33. Sections 56.151 through 56.154, Utilities Code, as added by Section 18.08, **SB 1368**, Acts of the 76th Legislature, Regular Session, 1999, are amended to read as follows:

Sec. 56.151. SPECIALIZED TELECOMMUNICATIONS [~~DEVICE~~] ASSISTANCE PROGRAM. The commission and the Texas Commission for the Deaf and Hard of Hearing by rule shall establish a specialized telecommunications assistance program to provide financial assistance to [~~certain~~] individuals with disabilities that impair the individuals' ability to effectively access the telephone network [~~who are deaf or have an impairment of hearing or speech~~] to enable the individuals to purchase specialized equipment or services to provide telephone network access that is functionally equivalent to that enjoyed by individuals without

disabilities [~~an impairment of hearing or speech~~]. The agencies may adopt joint rules that identify devices and services eligible for vouchers under the program.

Sec. 56.152. ELIGIBILITY. The Texas Commission for the Deaf and Hard of Hearing by rule shall prescribe eligibility standards for individuals, including deaf individuals and individuals who have an impairment of hearing or speech, to receive an assistance voucher under the program. To be eligible, an individual must be a resident of this state who has access to a telephone line in the individual's home or place of business.

Sec. 56.153. VOUCHERS. (a) The Texas Commission for the Deaf and Hard of Hearing shall determine a reasonable price for a basic specialized telecommunications device or basic specialized services to provide telephone network access from a home or business [~~for the deaf (TDD or TTY)~~] and distribute to each eligible applicant a voucher that guarantees payment of that amount to a distributor of new specialized telecommunications devices described by Section 56.151 or to a provider of services described by that section. The Texas Commission for the Deaf and Hard of Hearing may issue a voucher for a service only if the service is less expensive than a device eligible for a voucher under the program to meet the same need.

(b) A voucher must have the value printed on its face. The individual exchanging a voucher for the purchase of a specialized telecommunications device or service is responsible for payment of the difference between the voucher's value and the price of the device or service.

(c) The commission and the Texas Commission for the Deaf and Hard of Hearing by rule shall provide that a distributor of devices or a provider of services will receive not more than the full price of the device or service [~~a specialized telecommunications device~~] if the recipient of a voucher exchanges the voucher for a device or service that the distributor or provider sells for less than the voucher's value.

(d) An individual who has exchanged a voucher for a specialized telecommunications device is not eligible to receive another voucher before the seventh anniversary of the date the individual exchanged the previously issued voucher unless, before that date, the recipient develops a need for a different type of telecommunications device or service under the program because the recipient's disability changes or the recipient acquires another disability.

(e) An individual is not eligible for a voucher if the Texas Commission for the Deaf and Hard of Hearing has issued a voucher to another individual in the individual's household for a device or service to serve the same telephone line.

(f) [~~(e)~~] The Texas Commission for the Deaf and Hard of Hearing shall:

(1) process each application for a voucher to determine eligibility of the applicant; and

(2) give each eligible applicant a voucher on payment of a $35 fee.

(g) [~~(f)~~] The Texas Commission for the Deaf and Hard of Hearing shall maintain a record regarding each individual who receives a voucher under the program.

(h) [~~(g)~~] The Texas Commission for the Deaf and Hard of Hearing shall deposit money collected under the program to the credit of the universal service fund.

Sec. 56.154. COMMISSION DUTIES. (a) Not later than the 45th day after the date the commission receives a voucher a telecommunications device distributor presents for payment or a voucher a telecommunications service provider presents for payment, the commission shall pay to the distributor or service provider the lesser of the value of a voucher properly exchanged for a specialized telecommunications

device or service or the full price of the device or service for which a voucher recipient exchanges the voucher. The payments must be made from the universal service fund.

(b) The commission may investigate whether the presentation of a voucher for payment represents a valid transaction for a telecommunications device or service under the program. The Texas Commission for the Deaf and Hard of Hearing shall cooperate with and assist the commission in an investigation under this subsection.

(c) Notwithstanding Section 56.153(a), the commission may:

(1) delay payment of a voucher to a distributor of devices or a service provider if there is a dispute regarding the amount or propriety of the payment or whether the device or service is appropriate or adequate to meet the needs of the person to whom the Texas Commission for the Deaf and Hard of Hearing issued the voucher until the dispute is resolved;

(2) provide that payment of the voucher is conditioned on the return of the payment if the device is returned to the distributor or if the service is not used by the person to whom the voucher was issued; and

(3) provide an alternative dispute resolution process for resolving a dispute regarding a subject described by Subdivision (1) or (2).

SECTION 34. Subsection (a), Section 56.155, Utilities Code, as added by Section 18.08, **SB 1368**, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

(a) The commission shall allow a telecommunications utility to recover the universal service fund assessment related to the specialized telecommunications [~~device~~] assistance program through a surcharge added to the utility's customers' bills.

(3) Renumber the sections of the bill accordingly.

Floor Amendment No. 10

Amend **CSSB 560** as follows:

(1) On page 36, line 18, insert the words "but subject to Section 58.003(b)" after the word "chapter" and before the comma

(2) On page 37, line 2, strike the words "In addition to the" and substitute the word "The"

(3) On page 37, line 3, strike the comma and substitute the words "shall not apply to"

(4) On page 37, line 4, after the word "lines", insert the words "after the date on which it completes the infrastructure improvements described in this Subsection (b). The electing company"

(5) On page 37, line 6, strike the words and characters "September 1, 2001" and substitute the words "September 1, 2000".

Floor Amendment No. 13

Amend **CSSB 560** (House Committee Report) as follows:

(1) In Section 64.152(c)(1), Utilities Code, as added by SECTION 50 of the bill (page 70, line 26), after the semicolon, insert "or".

(2) In Section 64.152(c)(2), Utilities Code, as added by SECTION 50 of the bill (page 71, line 6), strike "charges; or" and substitute "charges."

(3) In Section 64.152(c), Utilities Code, as added by SECTION 50 of the bill (page 71, lines 7-15), strike Subdivision (3).

Floor Amendment No. 14

Amend **CSSB 560** by adding a new appropriately numbered section to read as follows and renumbering subsequent sections appropriately:

SECTION ___. Subchapter F, Chapter 52, Utilities Code, is amended by adding Section 52.256 to read as follows:

Sec. 52.256. PLAN AND REPORT OF WORKFORCE DIVERSITY AND OTHER BUSINESS PRACTICES. (a) In this section, "small business" and "historically underutilized business" have the meanings assigned by Section 481.191, Government Code.

(b) Before January 1, 2000, each telecommunications utility shall develop and submit to the commission a comprehensive five-year plan to enhance diversity of its workforce in all occupational categories and for increasing opportunities for small and historically underutilized businesses. The plan must consist of:

(1) the telecommunications utility's performance with regard to workforce diversity and contracting with small and historically underutilized businesses;

(2) initiatives that the telecommunications utility will pursue in these areas over the period of the plan;

(3) a listing of programs and activities the telecommunications utility will undertake to achieve each of these initiatives; and

(4) a listing of the business partnership initiatives the telecommunications utility will undertake to facilitate small and historically underutilized business entry into the telecommunications market, taking into account opportunities for contracting and joint ventures.

(c) Each telecommunications utility shall submit an annual report to the commission and the legislature relating to its efforts to improve workforce diversity and contracting opportunities for small and historically underutilized businesses. The report must include:

(1) the diversity of the telecommunications utility's workforce as of the time of the report;

(2) the telecommunications utility's level of contracting with small and historically underutilized businesses;

(3) the specific progress made under the plan under Subsection (b);

(4) the specific initiatives, programs, and activities undertaken under the plan during the preceding year;

(5) an assessment of the success of each of those initiatives, programs, and activities;

(6) the extent to which the telecommunications utility has carried out its initiatives to facilitate opportunities for contracts or joint ventures with small and historically underutilized businesses; and

(7) the initiatives, programs, and activities the telecommunications utility will pursue during the next year to increase the diversity of its workforce and contracting opportunities for small and historically underutilized businesses.

Amendment No. 15

Amend **CSSB 560** by adding a new SECTION as follows:

SECTION ___. Add a new Section 54.2025, Utilities Code, to read as follows:

Sec. 54.2025. RURAL TELEPHONE COMPETITION. (a) Notwithstanding the prohibitions set forth in sections 54.201 and 54.202, either a municipality or a

municipal electric system may obtain a certificate of convenience and necessity, certificate of operating authority or a service provider certificate of authority so long as:

(1) the area the municipality or electric system is requesting certification is served by a local exchange company with more than one million access lines in this state;

(2) the municipality did not have a population in excess of 70,000 according to the 1990 federal census; or

(3) the municipal electric system did not have more than 31,000 customers as of December 31, 1990; and

(b) No municipality offering telecommunications services may regulate the rates or services of the incumbent local exchange company nor may the municipality unfairly discriminate or unfairly exercise any preference to the disadvantage of the incumbent local exchange company or any other telecommunications provider.

Floor Amendment No. 17

Amend the Counts amendment to **CSSB 560** (page 27 of the packet) by adding the following to the end of Subsection (b), Section 54.2025, Utilities Code:

Nothing in this subchapter shall prevent a municipality, or a municipal electric system that is a member of a municipal power agency formed under Chapter 163 by adoption of a concurrent resolution by the participating municipalities on or before August 1, 1975, from leasing any of the excess capacity of its fiber optic cable facilities (dark fiber), so long as the rental of the fiber facilities is done on a nondiscriminatory, nonpreferential basis.

Floor Amendment No. 19

Amend the Chavez amendment to **CSSB 560** (page 28 of the packet), by adding the following to the end of Section 55.1775, Utilities Code, as added by the amendment:

This section applies only to pay telephone that charges more than 25 cents for a coin sent-paid call.

Floor Amendment No. 20

Amend **CSSB 560** by adding the following section, numbered appropriately:

SECTION ___. Section 57.042, Utilities Code, is amended to read as follows:

Sec. 57.042. DEFINITIONS. In this subchapter:

(1) "Ambulatory health care center" means a health care clinic or an association of such a clinic that is:

(A) exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as amended, as an organization described by Section 501(c)(3), as amended; and

(B) funded wholly or partly by a grant under 42 U.S.C. Section 254b, 254c, or 256, as amended.

(2) "Board" means the telecommunications infrastructure fund board.

(3) [~~(2)~~] "Commercial mobile service provider" means a provider of commercial mobile service as defined by Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66).

(4) [~~(3)~~] "Fund" means the telecommunications infrastructure fund.

(5) [~~(4)~~] "Institution of higher education" means:

(A) an institution of higher education as defined by Section 61.003, Education Code; or

(B) a private or independent institution of higher education as defined by Section 61.003, Education Code.

(6) [~~(5)~~] "Library" means:

(A) a public library or regional library system as those terms are defined by Section 441.122, Government Code; or

(B) a library operated by an institution of higher education or a school district.

(7) [~~(6)~~] "Public not-for-profit health care facility" means a rural or regional hospital or other entity such as a rural health clinic that:

(A) is supported by local or regional tax revenue; [~~or~~]

(B) is a certified not-for-profit health corporation, under federal law; or

(C) is an ambulatory health care center.

(8) [~~(7)~~] "School district" includes an independent school district, a common school district, and a rural high school district.

(9) [~~(8)~~] "Public school" means a public elementary or secondary school, including an open-enrollment charter school, a home-rule school district school, and a school with a campus or campus program charter.

(10) [~~(9)~~] "Taxable telecommunications receipts" means taxable telecommunications receipts reported under Chapter 151, Tax Code.

(11) [~~(10)~~] "Telemedicine":

(A) means medical services delivered by telecommunications technologies to rural or underserved public not-for-profit health care facilities or primary health care facilities in collaboration with an academic health center and an associated teaching hospital or tertiary center or with another public not-for-profit health care facility; and

(B) includes consultive services, diagnostic services, interactive video consultation, teleradiology, telepathology, and distance education for working health care professionals.

Floor Amendment No. 27

Amend the Counts amendment No. 15 to **CSSB 560** (page 27 of the packet) to read as follows:

Amend **CSSB 560** by adding a new appropriately numbered Section to read as follows and renumbering subsequent Sections accordingly:

SECTION ___. Subchapter E, Chapter 54, Utilities Code, is amended by adding Section 54.2025 to read as follows:

Sec. 54.2025. LEASE OF FIBER OPTIC CABLE FACILITIES. Nothing in this subchapter shall prevent a municipality, or a municipal electric system that is a member of a municipal power agency formed under Chapter 163 by adoption of a concurrent resolution by the participating municipalities on or before August 1, 1975, from leasing any of the excess capacity of its fiber optic cable facilities (dark fiber), so long as the rental of the fiber facilities is done on a nondiscriminatory, nonpreferential basis.

Floor Amendment No. 2 on Third Reading

Amend **CSSB 560** on third reading by adding the following appropriately numbered SECTIONS of the bill and renumbering subsequent SECTIONS appropriately:

SECTION __. Section 56.072(b), Utilities Code, is amended to read as follows:

(b) To be eligible for the tel-assistance service program, an applicant must:

(1) be a head of household and disabled, as determined by the department, or be 65 years of age or older; and

(2) have a household income at or below the poverty level, as determined by the United States Office of Management and Budget and reported annually in the Federal Register.

SECTION __. Section 56.073(a) Utilities Code, is amended to read as follows:

(a) Each three [~~six~~] months, the department shall provide to each local exchange company a list of all persons eligible for the tel-assistance service program that includes each person's:

(1) name;

(2) address; and

(3) if applicable, telephone number.

Floor Amendment No. 3 on Third Reading

Amend **CSSB 560** on third reading by adding a new appropriately numbered section to read as follows and renumbering subsequent sections appropriately:

SECTION ____. This Act takes effect September 1, 1999.

The amendments were read.

Senator Sibley moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **SB 560** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sibley, Chair; Armbrister, Fraser, Madla, and Nelson.

(Senator Moncrief in Chair)

SENATE RESOLUTION 1137

Senator Haywood offered the following resolution:

WHEREAS, The Senate of the State of Texas is proud to recognize Knox County Judge David Perdue for his contributions to the citizens of Knox County and the State of Texas; and

WHEREAS, Born in Knox County, David Perdue graduated from Stephen F. Austin State University, earning a bachelor's degree and a master's degree in education; he has been a teacher, coach, college administrator, business owner, and executive director of the State Trade Association; and

WHEREAS, Judge Perdue has led the West Central Texas Council of Governments, the Texas Association of Regional Councils of Government, and the Texas Association of Counties, all of which have benefitted from his knowledge and expertise; and

WHEREAS, He has also exhibited his leadership skills by serving as president of the West Texas County Judges and Commissioners Association, the County Judges and Commissioners Association of Texas, and the Aspermont Small Business Development Center; and

WHEREAS, Having served every professional state and regional organization in local county government as president, Judge Perdue has accomplished something no other county official has done in the history of the State of Texas; and

WHEREAS, Donating innumerable hours and immeasurable service to his community and state, he has bestowed the advantage of his superior experience on the citizens of Knox County and the entire State of Texas; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 76th Legislature, hereby congratulate Knox County Judge David Perdue for his many achievements and applaud his career of service and his unparalleled accomplishments; and, be it further

RESOLVED, That a copy of this Resolution be prepared for him as an expression of the highest regard of the Texas Senate.

The resolution was again read.

The resolution was previously adopted on Wednesday, May 26, 1999.

GUEST PRESENTED

Senator Haywood was recognized and introduced to the Senate Knox County Judge David Perdue.

The Senate welcomed Judge Perdue.

(President in Chair)

HOUSE CONCURRENT RESOLUTION 304

The President laid before the Senate the following resolution:

HCR 304, Honoring Mariachi Cultural of University High School in Waco.

SIBLEY

The resolution was read.

On motion of Senator Sibley and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

GUESTS PRESENTED

Senator Sibley was recognized and introduced to the Senate members of the University High School Mariachi Cultural band of Waco.

The Senate welcomed its guests.

(Senator Brown in Chair)

(President in Chair)

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1 ADOPTED

Senator Ratliff called from the President's table the Conference Committee Report on **HB 1**. The Conference Committee Report was filed with the Senate on Monday, May 24, 1999.

On motion of Senator Ratliff, the Conference Committee Report was adopted by a viva voce vote.

RECORD OF VOTE

Senator Barrientos asked to be recorded as voting "Nay" on the adoption of the Conference Committee Report.

CAPITOL PHYSICIAN

Senator Ogden was recognized and presented Dr. Henry Pope, Jr., of Bryan as the "Doctor for the Day."

The Senate welcomed Dr. Pope and thanked him for his participation in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians.

GUESTS PRESENTED

Senator Fraser was recognized and introduced to the Senate a delegation from the First Baptist Church of Kingsland.

The Senate welcomed its guests.

GUESTS PRESENTED

The President introduced to the Senate Sally Ratliff, wife of Senator Ratliff.

The Senate welcomed Mrs. Ratliff.

The President also introduced to the Senate Representative Robert A. Junell of San Angelo, who addressed the Senate.

The Senate welcomed Representative Junell.

REMARKS ORDERED PRINTED

On motion of Senator Sibley and by unanimous consent, the following remarks by Representative Junell were ordered reduced to writing and printed in the *Senate Journal:*

LONE STAR WARS: THE PHANTOM SURPLUS

A long time ago in a galaxy far, far away . . . turmoil had engulfed the Galactic Republic of Texas. Tax relief for school districts and tobacco settlement endowments for outlying star systems were in dispute. While the Legislature of the Republic endlessly debated this alarming situation, the Supreme Chancellors secretly dispatched two Jedi Knights, the guardians of finance and peace, to settle the conflict. This is the story of those Jedi Knights.

Obi-Wan was a Jedi Senator, Chairman, and pilot for the Galactic Republic of Texas. As a youth, Obi-Wan studied the ways of the Legislature under the tutelage of

the great Jedi Master, Bob Bullock, broadening his power from an already durable inner strength. As a Jedi Senator for the Texas Republic, he fought bravely in the Legislative Wars alongside such excellent warriors as Carlos Truan, Mike Moncrief, Bob Duncan, and Troy Fraser. Soon, he gained the rank of Chairman.

During the 76th Legislature, Obi-Wan noticed a young Jedi House Member named Rob Skywalker, who had an innate tendency toward the Force. Seeking to pass on his Jedi knowledge, he decided to train the young House member in its ways. Obi-Wan had never taken on a student before and teaching was more difficult than he anticipated, especially since Rob Skywalker went to Tech. Having been introduced to this bold new arena of power, Rob Skywalker became excited and craved to learn as much as he could as fast as he could. This left him wide open to temptation from the dark side of agency bureaucracy, FTES, higher education, and red tape.

When Obi-Wan recognized the change, he tried to bring Rob back, preaching the evils of the dark side, hoping to drag him back by the single thread of good left in him: his adamant aversion to spending even a penny. But Rob would have none of his "Let's just adopt the Senate version" talk, and their discussion turned quickly to argument and even quicker to 7:00 a.m. meetings. Conference committee was long and furious, ending with Rob falling headlong into a pit of Article XI requests and Article IX riders. Obi-Wan left, believing that his friend was hopelessly unconstitutional.

When Obi-Wan learned that Rob had clawed his way out of the pool and renamed himself Chairman of Appropriations, he immediately left to find Queen Keeton Rylander, keeper of the golden eggs. Obi-Wan found her, and after a short delay, she delivered the eggs. Obi-Wan took the $806 million and gave it to the adoptive parents: GWB 2000, Viceroy of Property Tax Relief, and Rick Perry, Master Chewbaccan Teacher. Obi-Wan himself went into seclusion in Mount Pleasant due to extermination of the Death Star: Special Session.

The galaxy should not fear, however, for Obi-Wan's seclusion is far from eternal. With light years remaining in his Jedi Senate term, he is sure to be seen on the Planet of Austin again. I hope all Wookiees, Droids, and Jedis will celebrate with me the honor, the wisdom, the humor, the integrity, and the Force in Obi-Wan Ratliff.

PRESENTATION

Representative Junell, upon completion of his remarks to the Senate, presented Obi-Wan Ratliff, Senator Ratliff, with a Jedi Lightsaber and stated, "May the Force be with you."

SENATE BILL 7 WITH HOUSE AMENDMENTS

Senator Sibley called **SB 7** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 7** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to electric utility restructuring and to the powers and duties of the Public Utility Commission of Texas, Office of Public Utility Counsel, and Texas Natural Resource Conservation Commission; providing penalties.

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

SECTION 1. Section 11.003, Utilities Code, is amended to read as follows:

Sec. 11.003. DEFINITIONS. In this title:

(1) "Affected person" means:

(A) a public utility or electric cooperative affected by an action of a regulatory authority;

(B) a person whose utility service or rates are affected by a proceeding before a regulatory authority; or

(C) a person who:

(i) is a competitor of a public utility with respect to a service performed by the utility; or

(ii) wants to enter into competition with a public utility.

(2) "Affiliate" means:

(A) a person who directly or indirectly owns or holds at least five percent of the voting securities of a public utility;

(B) a person in a chain of successive ownership of at least five percent of the voting securities of a public utility;

(C) a corporation that has at least five percent of its voting securities owned or controlled, directly or indirectly, by a public utility;

(D) a corporation that has at least five percent of its voting securities owned or controlled, directly or indirectly, by:

(i) a person who directly or indirectly owns or controls at least five percent of the voting securities of a public utility; or

(ii) a person in a chain of successive ownership of at least five percent of the voting securities of a public utility;

(E) a person who is an officer or director of a public utility or of a corporation in a chain of successive ownership of at least five percent of the voting securities of a public utility; or

(F) a person determined to be an affiliate under Section 11.006.

(3) "Allocation" means the division among municipalities or among municipalities and unincorporated areas of the plant, revenues, expenses, taxes, and reserves of a utility used to provide public utility service in a municipality or for a municipality and unincorporated areas.

(4) "Commission" means the Public Utility Commission of Texas.

(5) "Commissioner" means a member of the Public Utility Commission of Texas.

(6) "Cooperative corporation" means:

(A) an electric cooperative [~~corporation organized under Chapter 161 or a predecessor statute to Chapter 161 and operating under that chapter~~]; or

(B) a telephone cooperative corporation organized under Chapter 162 or a predecessor statute to Chapter 162 and operating under that chapter.

(7) "Corporation" means a domestic or foreign corporation, joint-stock company, or association, and each lessee, assignee, trustee, receiver, or other successor in interest of the corporation, company, or association, that has any of the powers or privileges of a corporation not possessed by an individual or partnership. The term does not include a municipal corporation or electric cooperative, except as expressly provided by this title.

(8) "Counsellor" means the public utility counsel.

(9) "Electric cooperative" means:

(A) a corporation organized under Chapter 161 or a predecessor statute to Chapter 161 and operating under that chapter;

(B) a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in the State of Texas; or

(C) a successor to an electric cooperative created before June 1, 1999, in accordance with a conversion plan approved by a vote of the members of the electric cooperative, regardless of whether the successor later purchases, acquires, merges with, or consolidates with other electric cooperatives.

(10) "Facilities" means all of the plant and equipment of a public utility, and includes the tangible and intangible property, without limitation, owned, operated, leased, licensed, used, controlled, or supplied for, by, or in connection with the business of the public utility.

(11) [~~(10)~~] "Municipally owned utility" means a utility owned, operated, and controlled by a municipality or by a nonprofit corporation the directors of which are appointed by one or more municipalities.

(12) [~~(11)~~] "Office" means the Office of Public Utility Counsel.

(13) [~~(12)~~] "Order" means all or a part of a final disposition by a regulatory authority in a matter other than rulemaking, without regard to whether the disposition is affirmative or negative or injunctive or declaratory. The term includes:

(A) the issuance of a certificate of convenience and necessity; and

(B) the setting of a rate.

(14) [~~(13)~~] "Person" includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation, but does not include an electric cooperative.

(15) [~~(14)~~] "Proceeding" means a hearing, investigation, inquiry, or other procedure for finding facts or making a decision under this title. The term includes a denial of relief or dismissal of a complaint.

(16) [~~(15)~~] "Rate" includes:

(A) any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by a public utility for a service, product, or commodity described in the definition of utility in Section 31.002 or 51.002; and

(B) a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification.

(17) [~~(16)~~] "Ratemaking proceeding" means[~~:~~

[~~(A)~~] a proceeding in which a rate is changed[~~; and~~

[~~(B) a proceeding initiated under Chapter 34~~].

(18) [~~(17)~~] "Regulatory authority" means either the commission or the governing body of a municipality, in accordance with the context.

(19) [~~(18)~~] "Service" has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by a public utility in the performance of the utility's duties under this title to its patrons, employees, other public utilities, an electric cooperative, and the public. The term also includes the interchange of facilities between two or more public utilities. The term does not include the printing, distribution, or sale of advertising in a telephone directory.

(20) [~~(19)~~] "Test year" means the most recent 12 months, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a public utility are available.

(21) [~~(20)~~] "Trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional persons who are employed by public utilities or utility competitors to assist the public utility industry, a utility competitor, or the industry's or competitor's employees in dealing with mutual business or professional problems and in promoting their common interest.

SECTION 2. 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, 2005 [~~2001~~].

SECTION 3. Section 12.101, Utilities Code, is amended to read as follows:

Sec. 12.101. COMMISSION EMPLOYEES. The commission shall employ:

(1) an executive director; and

(2) [~~a general counsel; and~~

[~~(3)~~] officers and other employees the commission considers necessary to administer this title.

SECTION 4. Sections 12.151 and 12.152, Utilities Code, are amended to read as follows:

Sec. 12.151. REGISTERED LOBBYIST. A person 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 commission may not serve as a commissioner [~~or act as general counsel to the commission~~].

Sec. 12.152. CONFLICT OF INTEREST. (a) A person is not eligible for appointment as a commissioner [~~or for employment as the general counsel~~] or executive director of the commission if:

(1) the person serves on the board of directors of a company that supplies fuel, utility-related services, or utility-related products to regulated or unregulated electric or telecommunications utilities; or

(2) the person or the person's spouse:

(A) is employed by or participates in the management of a business entity or other organization that is regulated by or receives funds from the commission;

(B) directly or indirectly owns or controls more than a 10 percent interest or a pecuniary interest with a value exceeding $10,000 in:

(i) a business entity or other organization that is regulated by or receives funds from the commission; or

(ii) a utility competitor, utility supplier, or other entity affected by a commission decision in a manner other than by the setting of rates for that class of customer;

(C) uses or receives a substantial amount of tangible goods, services, or funds from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses; or

(D) notwithstanding Paragraph (B), has an interest in a mutual fund or retirement fund in which more than 10 percent of the fund's holdings at the time of appointment is in a single utility, utility competitor, or utility supplier in this state and the person does not disclose this information to the governor, senate, commission, or other entity, as appropriate.

(b) A person otherwise ineligible because of Subsection (a)(2)(B) may be appointed to the commission and serve as a commissioner or may be employed as [~~the general counsel or~~] executive director if the person:

(1) notifies the attorney general and commission that the person is ineligible because of Subsection (a)(2)(B); and

(2) divests the person or the person's spouse of the ownership or control:

(A) before beginning service or employment; or

(B) if the person is already serving or employed, within a reasonable time.

SECTION 5. 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, 2005 [~~2001~~].

SECTION 6. Subsection (a), Section 13.003, Utilities Code, is amended to read as follows:

(a) The office:

(1) shall assess the effect of utility rate changes and other regulatory actions on residential consumers in this state;

(2) shall advocate in the office's own name a position determined by the counsellor to be most advantageous to a substantial number of residential consumers;

(3) may appear or intervene, as a party or otherwise, as a matter of right on behalf of:

(A) residential consumers, as a class, in any proceeding before the commission, including an alternative dispute resolution proceeding; and

(B) small commercial consumers, as a class, in any proceeding in which the counsellor determines that small commercial consumers are in need of representation, including an alternative dispute resolution proceeding;

(4) may initiate or intervene as a matter of right or otherwise appear in a judicial proceeding:

(A) that involves an action taken by an administrative agency in a proceeding, including an alternative dispute resolution proceeding, in which the counsellor is authorized to appear; or

(B) in which the counsellor determines that residential electricity consumers or small commercial electricity consumers are in need of representation;

(5) is entitled to the same access as a party, other than commission staff, to records gathered by the commission under Section 14.204;

(6) is entitled to discovery of any nonprivileged matter that is relevant to the subject matter of a proceeding or petition before the commission;

(7) may represent an individual residential or small commercial consumer with respect to the consumer's disputed complaint concerning utility services that is unresolved before the commission; and

(8) may recommend legislation to the legislature that the office determines would positively affect the interests of residential and small commercial consumers.

SECTION 7. Section 13.024, Utilities Code, is amended to read as follows:

Sec. 13.024. PROHIBITED ACTS. (a) The counsellor may not[~~:~~

[~~(1)~~] have a direct or indirect interest in a utility company regulated under this title[~~; or~~

[~~(2) provide legal services directly or indirectly to or be employed in any capacity by a utility company regulated under this title~~], its parent, or its subsidiary companies, corporations, or cooperatives or a utility competitor, utility supplier, or other entity affected in a manner other than by the setting of rates for that class of customer.

(b) The prohibition under Subsection (a) applies during the period of the counsellor's service [~~and until the second anniversary of the date the counsellor ceases to serve as counsellor.~~

[~~(c) This section does not prohibit a person from otherwise engaging in the private practice of law after the person ceases to serve as counsellor~~].

SECTION 8. Section 13.043, Utilities Code, is amended to read as follows:

Sec. 13.043. PROHIBITION ON EMPLOYMENT OR REPRESENTATION. (a) A former counsel may not make any communication to or appearance before the commission or an officer or employee of the commission before the second anniversary of the date the person ceases to serve as counsel if the communication or appearance is made:

(1) on behalf of another person in connection with any matter on which the person seeks official action; or

(2) with the intent to influence a commission decision or action.

(b) A former counsel may not represent any person or receive compensation for services rendered on behalf of any person regarding a matter before the commission before the second anniversary of the date the person ceases to serve as counsel.

(c) A person commits an offense if the person violates this section. An offense under this subsection is a Class A misdemeanor.

(d) An [~~The counsellor or an~~] employee of the office may not:

(1) be employed by a public utility that was in the scope of the [~~counsellor's or~~] employee's official responsibility while the [~~counsellor or~~] employee was associated with the office; or

(2) represent a person before the commission or a court in a matter:

(A) in which the [~~counsellor or~~] employee was personally involved while associated with the office; or

(B) that was within the [~~counsellor's or~~] employee's official responsibility while the [~~counsellor or~~] employee was associated with the office.

(e) [~~(b)~~] The prohibition of Subsection (d)(1) [~~(a)(1)~~] applies until the[~~:~~

[~~(1) second anniversary of the date the counsellor ceases to serve as a counsellor; and~~

[~~(2)~~] first anniversary of the date the employee's employment with the office ceases.

(f) [~~(c)~~] The prohibition of Subsection (d)(2) [~~(a)(2)~~] applies while an [~~a counsellor or~~] employee of the office is associated with the office and at any time after.

(g) For purposes of this section, "person" includes an electric cooperative.

SECTION 9. Subsection (d), Section 14.101, Utilities Code, is amended to read as follows:

(d) This section does not apply to:

(1) the purchase of a unit of property for replacement; [~~or~~]

(2) an addition to the facilities of a public utility by construction; or

(3) transactions that facilitate unbundling, asset valuation, minimization of ownership or control of generation assets, or other purposes consistent with Chapter 39.

SECTION 10. Subsections (a) and (b), Section 16.001, Utilities Code, are amended to read as follows:

(a) To defray the expenses incurred in the administration of this title, an assessment is imposed on each public utility, retail electric provider, and electric cooperative within the jurisdiction of the commission that serves the ultimate consumer, including each interexchange telecommunications carrier.

(b) An assessment under this section is equal to one-sixth of one percent of the public utility's, retail electric provider's, or electric cooperative's gross receipts from rates charged to the ultimate consumer in this state.

SECTION 11. Section 31.002, Utilities Code, is amended to read as follows:

Sec. 31.002. DEFINITIONS. In this subtitle:

(1) "Affiliated power generation company" means a power generation company that is affiliated with or the successor in interest of an electric utility certificated to serve an area.

(2) "Affiliated retail electric provider" means a retail electric provider that is affiliated with or the successor in interest of an electric utility certificated to serve an area.

(3) "Aggregation" includes the following:

(A) the purchase of electricity from a retail electric provider, a municipally owned utility, or an electric cooperative by an electricity customer for its own use in multiple locations; or

(B) the purchase of electricity by an electricity customer as part of a voluntary association of electricity customers.

(4) "Customer choice" means the freedom of a retail customer to purchase electric services, either individually or through voluntary aggregation with other retail customers, from the provider or providers of the customer's choice and to choose among various fuel types, energy efficiency programs, and renewable power suppliers.

(5) "Electric Reliability Council of Texas" or "ERCOT" means the area in Texas served by electric utilities, municipally owned utilities, and electric cooperatives that is not synchronously interconnected with electric utilities outside the state.

(6) "Electric utility" means a person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Subchapter C, Chapter 184, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:

(A) a municipal corporation;

(B) a qualifying facility;

(C) a power generation company;

(D) an exempt wholesale generator;

(E) [~~(D)~~] a power marketer;

(F) [~~(E)~~] a corporation described by Section 32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;

(G) an electric cooperative;

(H) a retail electric provider;

(I) this state or an agency of this state; or

(J) [~~(F)~~] a person not otherwise an electric utility who:

(i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;

(ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or

(iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Subchapter C, Chapter 184.

(7) [~~(2)~~] "Exempt wholesale generator" means a person who is engaged directly or indirectly through one or more affiliates exclusively in the business of owning or operating all or part of a facility for generating electric energy and selling electric energy at wholesale and who:

(A) does not own a facility for the transmission of electricity, other than an essential interconnecting transmission facility necessary to effect a sale of electric energy at wholesale; and

(B) has:

(i) applied to the Federal Energy Regulatory Commission for a determination under 15 U.S.C. Section 79z-5a; or

(ii) registered as an exempt wholesale generator as required by Section 35.032.

(8) "Freeze period" means the period beginning on January 1, 1999, and ending on December 31, 2001.

(9) "Independent system operator" means an entity supervising the collective transmission facilities of a power region that is charged with nondiscriminatory coordination of market transactions, systemwide transmission planning, and network reliability.

(10) "Power generation company" means a person that:

(A) generates electricity that is intended to be sold at wholesale;

(B) does not own a transmission or distribution facility in this state other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section; and

(C) does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.

(11) [~~(3)~~] "Power marketer" means a person who:

(A) becomes an owner of electric energy in this state for the purpose of selling the electric energy at wholesale;

(B) does not own generation, transmission, or distribution facilities in this state;

(C) does not have a certificated service area; and

(D) has:

(i) been granted authority by the Federal Energy Regulatory Commission to sell electric energy at market-based rates; or

(ii) registered as a power marketer under Section 35.032.

(12) "Power region" means a contiguous geographical area which is a distinct region of the North American Electric Reliability Council.

(13) [~~(4)~~] "Qualifying cogenerator" and "qualifying small power producer" have the meanings assigned those terms by 16 U.S.C. Sections 796(18)(C) and 796(17)(D). A qualifying cogenerator that provides electricity to the purchaser of the cogenerator's thermal output is not for that reason considered to be a retail electric provider or a power generation company.

(14) [~~(5)~~] "Qualifying facility" means a qualifying cogenerator or qualifying small power producer.

(15) [~~(6)~~] "Rate" includes a compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by an electric utility for a service, product, or commodity described in the definition of electric utility in this section and a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification that must be approved by a regulatory authority.

(16) "Retail customer" means the separately metered end-use customer who purchases and ultimately consumes electricity.

(17) "Retail electric provider" means a person that sells electric energy to retail customers in this state. A retail electric provider may not own or operate generation assets.

(18) "Separately metered" means metered by an individual meter that is used to measure electric energy consumption by a retail customer and for which the customer is directly billed by a utility, retail electric provider, electric cooperative, or municipally owned utility.

(19) "Transmission and distribution utility" means a person or river authority that owns or operates for compensation in this state equipment or facilities to transmit or distribute electricity, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section, in a qualifying power region certified under Section 39.152, but does not include a municipally owned utility or an electric cooperative.

(20) [~~(7)~~] "Transmission service" includes construction or enlargement of facilities, transmission over distribution facilities, control area services, scheduling resources, regulation services, reactive power support, voltage control, provision of operating reserves, and any other associated electrical service the commission determines appropriate, except that, on and after the implementation of customer choice, control area services, scheduling resources, regulation services, provision of operating reserves, and reactive power, voltage control, and other services provided by generation resources are not "transmission service."[~~:~~]

SECTION 12. Subchapter A, Chapter 32, Utilities Code, is amended by adding Section 32.0015 to read as follows:

Sec. 32.0015. REGULATION OF SUCCESSOR ELECTRIC UTILITY OR ELECTRIC COOPERATIVE. If an electric utility purchases, acquires, merges, or consolidates with or acquires 50 percent or more of the stock of an electric utility or electric cooperative, the commission shall regulate the successor electric utility or electric cooperative in the same manner that the commission would regulate the entity that was subject to the stricter regulation before the purchase, acquisition, merger, or consolidation.

SECTION 13. Sections 32.051 and 32.052, Utilities Code, are amended to read as follows:

Sec. 32.051. EXEMPTION OF RIVER AUTHORITY FROM WHOLESALE RATE REGULATION. Notwithstanding any other provision of this title, the commission may not directly or indirectly regulate revenue requirements, rates, fuel costs, fuel charges, or fuel acquisitions that are related to the generation and sale of electricity at wholesale, and not to ultimate consumers, by a river authority operating a steam generating plant on or before January 1, 1999.

Sec. 32.052. ABILITY OF CERTAIN RIVER AUTHORITIES TO CONSTRUCT IMPROVEMENTS. A river authority operating a steam generating plant on or before January 1, 1999, may acquire, finance, construct, rebuild, repower, and use new or existing power plants, equipment, transmission lines, or other assets to sell electricity exclusively at wholesale to:

(1) a purchaser in San Saba, Llano, Burnet, Travis, Bastrop, Blanco, Colorado, or Fayette County; or

(2) a purchaser in an area served by the river authority on January 1, 1975.

SECTION 14. Section 32.053, Utilities Code, is amended by amending Subsections (b) and (f) and adding Subsections (g) and (h) to read as follows:

(b) Notwithstanding a river authority's enabling legislation or Chapter 245, Acts of the 67th Legislature, Regular Session, 1981 (Article 717p, Vernon's Texas Civil Statutes), a corporation may:

(1) acquire, finance, construct, rebuild, repower, operate, or sell a facility directly related to the generation of electricity; [~~and~~]

(2) sell, at wholesale only, the output of the facility to a purchaser, other than an ultimate consumer, at any location in this state; and

(3) purchase and sell electricity, at wholesale only, to a purchaser, other than an ultimate consumer, at any location in this state.

(f) The proceeds from the sale of bonds or other obligations the interest on which is exempt from taxation and that are issued by a corporation or river authority subject to this section, other than a bond or obligation available to an investor-owned utility or exempt wholesale generator, may not be used by the corporation[~~, and may not have been used,~~] to finance the construction or acquisition of or the rebuilding or repowering of a facility for the generation of electricity by the corporation.

(g) Notwithstanding any other law, the board of directors of a river authority may sell, lease, loan, or otherwise transfer some, all, or substantially all of the electric generation property of the river authority to a nonprofit corporation authorized under this section or Chapter 245, Acts of the 67th Legislature, Regular Session, 1981 (Article 717p, Vernon's Texas Civil Statutes). The property transfer shall be made under terms and conditions approved by the board of directors of the river authority.

(h) Subsections (a)-(f) do not apply to a corporation created under Chapter 245, Acts of the 67th Legislature, Regular Session, 1981 (Article 717p, Vernon's Texas Civil Statutes), to serve an area described in Section 32.052.

SECTION 15. Subchapter A, Chapter 33, Utilities Code, is amended by adding Section 33.008 to read as follows:

Sec. 33.008. FRANCHISE CHARGES. (a) Following the end of the freeze period for a municipality that has been served by an electric utility, and following the date a municipally owned utility or an electric cooperative has implemented customer choice for a municipality that has been served by that municipally owned utility or electric cooperative, a municipality may impose on an electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative, as appropriate,

that provides distribution service within the municipality a reasonable charge as specified in Subsection (b) for the use of a municipal street, alley, or public way to deliver electricity to a retail customer. A municipality may not impose a charge on:

(1) an electric utility, or transmission and distribution utility, municipally owned utility, or electric cooperative for electric service provided outside the municipality;

(2) a qualifying facility;

(3) an exempt wholesale generator;

(4) a power marketer;

(5) a retail electric provider;

(6) a power generation company;

(7) a person that generates electricity on and after January 1, 2002; or

(8) an aggregator, as that term is defined by Section 39.353.

(b) If a municipality collected a charge or fee for a franchise to use a municipal street, alley, or public way from an electric utility, a municipally owned utility, or an electric cooperative before the end of the freeze period, the municipality, after the end of the freeze period or after implementation of customer choice by the municipally owned utility or electric cooperative, as appropriate, is entitled to collect from each electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative that uses the municipality's streets, alleys, or public ways to provide distribution service a charge based on each kilowatt hour of electricity delivered by the utility to each retail customer whose consuming facility's point of delivery is located within the municipality's boundaries. The charge imposed shall be equal to the total electric franchise fee revenue due the municipality from electric utilities, municipally owned utilities, or electric cooperatives, as appropriate, for calendar year 1998 divided by the total kilowatt hours delivered during 1998 by the applicable electric utility, municipally owned utility, or electric cooperative to retail customers whose consuming facilities' points of delivery were located within the municipality's boundaries. The compensation a municipality may collect from each electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative providing distribution service shall be equal to the charge per kilowatt-hour determined for 1998 multiplied times the number of kilowatt-hours delivered within the municipality's boundaries.

(c) The municipal franchise charges authorized by this section shall be considered a reasonable and necessary operating expense of each electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative that is subject to a charge under this section. The charge shall be included in the nonbypassable delivery charges that a customer's retail electric provider must pay under Section 39.107 to the utility serving the customer.

(d) The municipal franchise charges authorized by this section are in lieu of any franchise charges or fees payable under a franchise agreement in effect before the expiration of the freeze period or, as appropriate, before the implementation of customer choice by a municipally owned utility or electric cooperative. Except as otherwise provided by this section, this section does not affect a provision of a franchise agreement in effect before the end of the freeze period or, as appropriate, before the implementation of customer choice by a municipally owned utility or electric cooperative.

(e) A municipality may conduct an audit or other inquiry or may pursue any cause of action in relation to an electric utility's, transmission and distribution utility's, municipally owned utility's, or electric cooperative's payment of charges authorized by this section only if such audit, inquiry, or pursuit of a cause of action concerns a payment made less than two years before commencement of such audit, inquiry, or pursuit of a cause of action, provided, however, that this subsection does not apply to an audit, inquiry, or cause of action commenced before September 1, 1999. An electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative shall, on request of the municipality in connection with a municipal audit, identify the service provider and the type of service delivered for any service in addition to electricity delivered directly to retail customers through the utility's electricity-conducting facilities that are located in the municipality's streets, alleys, or public ways and for which the utility receives compensation.

(f) Notwithstanding any other provision of this section, on the expiration of a franchise agreement existing on September 1, 1999, an electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative and a municipality may mutually agree to a different level of compensation or to a different method for determining the amount the municipality may charge for the use of a municipal street, alley, or public way in connection with the delivery of electricity at retail within the municipality.

(g) After the end of the freeze period or after implementation of customer choice by the municipally owned utility or electric cooperative, as appropriate, a newly incorporated municipality or a municipality that has not previously collected compensation for the delivery of electricity at retail within the municipality may adopt and collect compensation based on the same rate per kilowatt hour that is collected by any other municipality in the same county that is served by the same electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative.

(h) In this section, "distribution service" means the delivery of electricity to all retail customers.

SECTION 16. Section 35.001, Utilities Code, is amended to read as follows:

Sec. 35.001. DEFINITION. In this subchapter, "electric utility" includes a municipally owned utility and an electric cooperative.

SECTION 17. Section 35.004, Utilities Code, is amended to read as follows:

Sec. 35.004. PROVISION OF TRANSMISSION SERVICE. (a) An electric utility or transmission and distribution utility that owns or operates transmission facilities shall provide wholesale transmission service at rates and terms, including terms of access, that are comparable to the rates and terms of the utility's own use of its system.

(b) The commission shall ensure that an electric utility or transmission and distribution utility provides nondiscriminatory access to wholesale transmission service for qualifying facilities, exempt wholesale generators, power marketers, power generation companies, retail electric providers, and other electric utilities or transmission and distribution utilities.

(c) When an electric utility, electric cooperative, or transmission and distribution utility provides wholesale transmission service within ERCOT at the request of a third party, the commission shall ensure that the utility recovers the utility's reasonable costs in providing wholesale transmission services necessary for the transaction from the

entity for which the transmission is provided so that the utility's other customers do not bear the costs of the service.

(d) The commission shall price wholesale transmission services within ERCOT based on the postage stamp method of pricing under which a transmission-owning utility's rate is based on the ERCOT utilities' combined annual costs of transmission divided by the total demand placed on the combined transmission systems of all such transmission-owning utilities within a power region. An electric utility subject to the freeze period imposed by Section 39.052 may treat transmission costs in excess of transmission revenues during the freeze period as an expense for purposes of determining annual costs in the annual report filed under Section 39.257. Notwithstanding Section 36.201, the commission may approve wholesale rates that may be periodically adjusted to ensure timely recovery of transmission investment.

(e) The commission shall ensure that ancillary services necessary to facilitate the transmission of electric energy are available at reasonable prices with terms and conditions that are not unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive. In this subsection, "ancillary services" means services necessary to facilitate the transmission of electric energy including load following, standby power, backup power, reactive power, and any other services as the commission may determine by rule. On the introduction of customer choice in the ERCOT power region, acquisition of generation-related ancillary services on a nondiscriminatory basis by the independent organization in ERCOT on behalf of entities selling electricity at retail shall be deemed to meet the requirements of this subsection.

SECTION 18. Subsection (b), Section 35.005, Utilities Code, is amended to read as follows:

(b) The commission may require transmission service at wholesale, including the construction or enlargement of a facility[~~, in a proceeding not related to approval of an integrated resource plan~~].

SECTION 19. Section 35.033, Utilities Code, is amended to read as follows:

Sec. 35.033. AFFILIATE WHOLESALE PROVIDER. An affiliate of an electric utility may be an exempt wholesale generator or power marketer and may sell electric energy to its affiliated electric utility in accordance with [~~Chapter 34 and other~~] laws governing wholesale sales of electric energy.

SECTION 20. Section 35.034, Utilities Code, is amended by adding Subsection (c) to read as follows:

(c) For purposes of this section, "electric utility" does not include a river authority.

SECTION 21. Section 35.035, Utilities Code, is amended by adding Subsection (d) to read as follows:

(d) For purposes of this section, "electric utility" does not include a river authority.

SECTION 22. Subchapter C, Chapter 35, Utilities Code, is amended by adding Section 35.067 to read as follows:

Sec. 35.067. APPLICATION FOR RECERTIFICATION. (a) An electric cooperative or a qualifying facility may submit to the commission for recertification an agreement previously certified under Section 35.062 or a predecessor statute if the agreement:

(1) permits recertification; or

(2) the qualifying facility agrees to submission.

(b) The commission may deny recertification if the commission determines that a material condition or fact on which the commission based the original certification, including the facility's status as a qualifying facility under 16 U.S.C. 796(18) or as determined by the Federal Energy Regulatory Commission, has changed or is no longer true.

SECTION 23. Chapter 35, Utilities Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. STATE AUTHORITY TO SELL OR CONVEY POWER

Sec. 35.101. DEFINITIONS. In this subchapter:

(1) "Commissioner" means the commissioner of the General Land Office.

(2) "Public retail customer" means a retail customer that is an agency of this state, an institution of higher education, a public school district, or a political subdivision of this state.

Sec. 35.102. STATE AUTHORITY TO SELL OR CONVEY POWER. The commissioner, acting on behalf of the state, may sell or otherwise convey power directly to a public retail customer regardless of whether the public retail customer is also classified as a wholesale customer under other provisions of this title.

Sec. 35.103. ACCESS TO TRANSMISSION AND DISTRIBUTION SYSTEMS; RATES. (a) Except as provided in Section 35.104, the state is entitled to have access to all transmission and distribution systems of all electric utilities, transmission and distribution utilities, municipally owned utilities, and electric cooperatives that serve public retail customers.

(b) An entity described by Subsection (a) shall provide any utility service, including transmission, distribution, and other services, which must include any applicable stranded costs or system benefit fees, to the state at the lowest applicable rate charged for similar service to other customers.

Sec. 35.104. LIMIT IN CERTAIN AREAS. Sections 35.102 and 35.103 do not apply to the rates, retail service area, facilities, or public retail customers of a municipally owned electric utility that has not adopted customer choice or an electric cooperative that has not adopted customer choice. In a certificated service area of an electric utility in which customer choice has not been introduced, the state may not engage in retail transactions that exceed 2.5 percent of a retail electric utility's total retail load.

Sec. 35.105. WHOLESALE CUSTOMERS. This subchapter does not prevent the commissioner, acting on behalf of this state, from registering as a power marketer.

SECTION 24. Section 36.008, Utilities Code, is amended to read as follows:

Sec. 36.008. STATE TRANSMISSION SYSTEM. In establishing rates for an electric utility [~~not required to file an integrated resource plan~~], the commission may review the state's transmission system and make recommendations to the utility on the need to build new power lines, upgrade power lines, and make other necessary improvements and additions.

SECTION 25. Section 36.052, Utilities Code, is amended to read as follows:

Sec. 36.052. ESTABLISHING REASONABLE RETURN. In establishing a reasonable return on invested capital, the regulatory authority shall consider applicable factors, including:

(1) [~~the efforts of the electric utility to comply with its most recently approved integrated resource plan;~~

[~~(2)~~] the efforts and achievements of the utility in conserving resources;

(2) [~~(3)~~] the quality of the utility's services;

(3) [~~(4)~~] the efficiency of the utility's operations; and

(4) [~~(5)~~] the quality of the utility's management.

SECTION 26. Subsection (d), Section 36.058, Utilities Code, is amended to read as follows:

(d) In making a finding regarding an affiliate transaction, [~~including an affiliate transaction subject to Chapter 34,~~] the regulatory authority shall:

(1) determine the extent to which the conditions and circumstances of that transaction are reasonably comparable relative to quantity, terms, date of contract, and place of delivery; and

(2) allow for appropriate differences based on that determination.

SECTION 27. Section 36.201, Utilities Code, is amended to read as follows:

Sec. 36.201. AUTOMATIC ADJUSTMENT FOR CHANGES IN COSTS. Except as permitted by [~~Chapter 34 or~~] Section 36.204, the commission may not establish a rate or tariff that authorizes an electric utility to automatically adjust and pass through to the utility's customers a change in the utility's fuel or other costs.

SECTION 28. Section 36.204, Utilities Code, is amended to read as follows:

Sec. 36.204. COST RECOVERY AND INCENTIVES. In establishing rates for an electric utility [~~not required to file an integrated resource plan~~], the commission may:

(1) allow timely recovery of the reasonable costs of conservation, load management, and purchased power, notwithstanding Section 36.201; and

(2) authorize additional incentives for conservation, load management, purchased power, and renewable resources.

SECTION 29. Section 36.207, Utilities Code, is amended to read as follows:

Sec. 36.207. USE OF MARK-UPS. Any mark-ups approved under [~~Chapter 34 or~~] Section 36.206 are an exceptional form of rate relief that the electric utility may recover from ratepayers only on a finding by the commission that the relief is necessary to maintain the utility's financial integrity.

SECTION 30. Section 37.001, Utilities Code, is amended to read as follows:

Sec. 37.001. DEFINITIONS. In this chapter:

(1) "Certificate" means a certificate of convenience and necessity.

(2) "Electric utility" includes an electric cooperative.

(3) "Retail electric utility" means a person, political subdivision, electric cooperative, or agency that operates, maintains, or controls in this state a facility to provide retail electric utility service. The term does not include a corporation described by Section 32.053 to the extent that the corporation sells electricity exclusively at wholesale and not to the ultimate consumer. A qualifying cogenerator that sells electric energy at retail to the sole purchaser of the cogenerator's thermal output under Sections 35.061 and 36.007 is not for that reason considered to be a retail electric utility. The owner or operator of a qualifying cogeneration facility who was issued the necessary environmental permits from the Texas Natural Resource Conservation Commission after January 1, 1998, and who commenced construction of such qualifying facility before July 1, 1998, may provide electricity to the purchasers of the thermal output of that qualifying facility and shall not for that reason be

considered an electric utility or a retail electric utility, provided that the purchasers of the thermal output are owners of manufacturing or process operation facilities that are located on a site entirely owned before September 1987 by one owner who retained ownership after September 1987 of some portion of the facilities and that those facilities now share some integrated operations, such as the provision of services and raw materials.

SECTION 31. Section 37.051, Utilities Code, is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding any other provision of this chapter, including Subsection (a), an electric cooperative is not required to obtain a certificate of public convenience and necessity for the construction, installation, operation, or extension of any generating facilities or necessary interconnection facilities.

SECTION 32. Section 37.054(b), Utilities Code, is amended to read as follows:

(b) A person or electric cooperative interested in the application may intervene at the hearing.

SECTION 33. Subchapter B, Chapter 37, Utilities Code, is amended by adding Sections 37.060 and 37.061 to read as follows:

Sec. 37.060. DIVISION OF MULTIPLY CERTIFICATED SERVICE AREAS. (a) This subsection and Subsections (b)-(g) apply only to areas in which each retail electric utility that is authorized to provide retail electric utility service to the area is providing customer choice. For purposes of this subsection, an electric cooperative or a municipally owned electric utility shall be deemed to be providing customer choice if it has approved a resolution adopting customer choice that is effective on January 1, 2002, or effective within 24 months after the date of the resolution adopting customer choice. All other retail electric utilities shall be deemed to be providing customer choice if customer choice will be allowed for customers of the retail electric utility on January 1, 2002. In areas in which each certificated retail electric utility is providing customer choice, the commission, if requested by a retail electric utility, shall examine all areas within the service area of the retail electric utility making the request that are also certificated to one or more other retail electric utilities and, after notice and hearing, shall amend the retail electric utilities' certificates so that only one retail electric utility is certificated to provide distribution services in any such area. Only retail electric utilities certificated to serve an area on June 1, 1999, may continue to serve the area or portion of the area under an amended certificate issued under this subsection.

(b) This section does not apply in any area in which a municipally owned utility is certificated to provide retail electric utility service if the municipally owned utility serving the area files with the commission by February 1, 2000, a request that areas within the certificated service area of the municipally owned utility remain as presently certificated.

(c) The commission shall enter its order dividing multiply certificated areas within one year of the date a request is received.

(d) In amending certificates under this section, the commission shall take into consideration the factors prescribed by Section 37.056.

(e) Notwithstanding Section 37.059, the commission shall revoke certificates to the extent necessary to achieve the division of retail electric service areas as provided by this section.

(f) Unless otherwise agreed by the affected retail electric utilities, each retail electric utility shall be allowed to continue to provide service to the location of electricity-consuming facilities it is serving on the date an application for division of the affected multiply certificated service areas is filed. No customer located within the affected multiply certificated service areas shall be permitted to switch from one retail electric utility to another while an application for division of the affected multiply certificated service areas is pending.

(g) If on June 1, 1999, retail service is being provided in an area by another retail electric utility with the written consent of the retail electric utility certificated to serve the area, that consent shall be filed with the commission. On notification of that consent and a request by an affected retail electric utility to amend the relevant certificates, the commission may grant an exception or amend a retail electric utility's certificate. This provision shall not be construed to limit the commission's authority to grant exceptions or to amend a retail electric utility's certificate, upon request and notification, for areas to which retail service is being provided pursuant to written consent granted after June 1, 1999.

(h) The commission may not grant an additional retail electric utility certificate to serve an area if the effect of the grant would cause the area to be multiply certificated unless the commission finds that the certificate holders are not providing service to any part of the area for which a certificate is sought and are not capable of providing adequate service to the area in accordance with applicable standards. However, neither this subsection nor the deadline of June 1, 1999, provided by Subsection (a) shall apply to any application for multiple certification filed with the commission on or before February 1, 1999, and those applications may be processed in accordance with applicable law in effect on the date the application was filed. Applications for multiple certification filed with the commission on or before February 1, 1999, may not be amended to expand the area for which a certificate is sought except for contiguous areas within municipalities that provide consent, as required by Section 37.053(b), not later than June 1, 1999.

(i) Notwithstanding any other provision of this section, if requested by a municipally owned utility, the commission shall examine all areas within the municipally owned utility's service area that are also certificated to one or more other retail electric utilities and, after notice and hearing, may amend the retail electric utilities' certificates so that only one retail electric utility is certificated to provide distribution services in the area, provided that:

(1) the application is filed with the commission within 12 months of the effective date of this provision and is limited to single certification of the area within the municipality's boundaries as of February 1, 1999;

(2) the commission preserves the right of an electric utility or an electric cooperative to serve its existing customers, including any property owned or leased by any customer; and

(3) the municipality is a member city of a municipal power agency, as that term is used in Section 40.059.

Sec. 37.061. EXISTING SERVICE AREA AGREEMENTS. (a) Notwithstanding any other provision of this title, the commission shall allow a municipally owned utility to amend the service area boundaries of its certificate if:

(1) the municipally owned utility was the holder of a certificate as of January 1, 1999;

(2) the municipally owned utility has an agreement existing before January 1, 1999, with a public utility serving the area that the public utility will not contest an application to amend the certificate to add municipal territory; and

(3) the area for which a certificate is requested is not certificated to a retail electric utility that is not a party to the agreement and that has not consented in writing to certification of the area to the municipality.

(b) The commission may not amend the certificate of the public utility serving the affected area based on the granting of a certificate to the municipally owned utility.

SECTION 34. Subsection (a), Section 37.101, Utilities Code, is amended to read as follows:

(a) If an area is or will be included within a municipality as the result of annexation, incorporation, or another reason, each electric utility and each electric cooperative that holds or is entitled to hold a certificate under this title to provide service or operate a facility in the area before the inclusion has the right to continue to provide the service or operate the facility and extend service within the utility's or cooperative's certificated area in the annexed or incorporated area under the rights granted by the certificate and this title.

SECTION 35. Section 38.001, Utilities Code, is amended to read as follows:

Sec. 38.001. GENERAL STANDARD. An electric utility and an electric cooperative shall furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable.

SECTION 36. Section 38.004, Utilities Code, is amended to read as follows:

Sec. 38.004. MINIMUM CLEARANCE STANDARD. Notwithstanding any other law, a transmission or distribution line owned by an electric utility or an electric cooperative must be constructed, operated, and maintained, as to clearances, in the manner described by the National Electrical Safety Code Standard ANSI (c)(2), as adopted by the American National Safety Institute and in effect at the time of construction.

SECTION 37. Subchapter A, Chapter 38, Utilities Code, is amended by adding Section 38.005 to read as follows:

Sec. 38.005. ELECTRIC SERVICE RELIABILITY MEASURES. (a) The commission shall implement service quality and reliability standards relating to the delivery of electricity to retail customers by electric utilities and transmission and distribution utilities. The commission by rule shall develop reliability standards, including:

(1) the system-average interruption frequency index (SAIFI);

(2) the system-average interruption duration index (SAIDI);

(3) achievement of average response time for customer service requests or inquiries; or

(4) other standards that the commission finds reasonable and appropriate.

(b) The commission shall take appropriate enforcement action under this section, including but not limited to action against a utility if any feeder with 10 or more customers appears on the utility's list of worst 10 percent performing feeders for any two consecutive years or has had a SAIDI or SAIFI average that is more than 300 percent greater than the system average of all feeders during any two-year period, beginning in the year 2000.

(c) The standards implemented under Subsection (a) shall require each electric utility and transmission and distribution utility subject to this section to maintain

adequately trained and experienced personnel throughout the utility's service area so that the utility is able to fully and adequately comply with the appropriate service quality and reliability standards.

(d) The standards shall ensure that electric utilities do not neglect any local neighborhood or geographic area, including rural areas, communities of less than 1,000 persons, and low-income areas, with regard to system reliability.

(e) The commission may require each electric utility and transmission and distribution utility to supply data to assist the commission in developing the reliability standards.

(f) Each electric utility, transmission and distribution utility, electric cooperative, municipally owned utility, and generation provider shall be obligated to comply with any operational criteria duly established by the independent organization as defined by Section 39.151 or adopted by the commission.

SECTION 38. Section 38.022, Utilities Code, is amended to read as follows:

Sec. 38.022. DISCRIMINATION AND RESTRICTION ON COMPETITION. An electric utility may not:

(1) discriminate against a person or electric cooperative who sells or leases equipment or performs services in competition with the electric utility; or

(2) engage in a practice that tends to restrict or impair that competition.

SECTION 39. Section 38.071, Utilities Code, is amended to read as follows:

Sec. 38.071. IMPROVEMENTS IN SERVICE; INTERCONNECTING SERVICE. The commission, after notice and hearing, may:

(1) order an electric utility to provide specified improvements in its service in a specified area if:

(A) service in the area is inadequate or substantially inferior to service in a comparable area; and

(B) requiring the company to provide the improved service is reasonable; or

(2) order two or more electric utilities or electric cooperatives to establish specified facilities for interconnecting service.

SECTION 40. Subtitle B, Title 2, Utilities Code, is amended by adding Chapters 39, 40, and 41 to read as follows:

CHAPTER 39. RESTRUCTURING OF ELECTRIC UTILITY INDUSTRY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 39.001. LEGISLATIVE POLICY AND PURPOSE. (a) The legislature finds that the production and sale of electricity is not a monopoly warranting regulation of rates, operations, and services and that the public interest in competitive electric markets requires that, except for transmission and distribution services and for the recovery of stranded costs, electric services and their prices should be determined by customer choices and the normal forces of competition. As a result, this chapter is enacted to protect the public interest during the transition to and in the establishment of a fully competitive electric power industry.

(b) The legislature finds that it is in the public interest to:

(1) implement on January 1, 2002, a competitive retail electric market that allows each retail customer to choose the customer's provider of electricity and that encourages full and fair competition among all providers of electricity;

(2) allow utilities with uneconomic generation-related assets and purchased power contracts to recover the reasonable excess costs over market of those assets and purchased power contracts;

(3) educate utility customers about anticipated changes in the provision of retail electric service to ensure that the benefits of the competitive market reach all customers; and

(4) protect the competitive process in a manner that ensures the confidentiality of competitively sensitive information during the transition to a competitive market and after the commencement of customer choice.

(c) Regulatory authorities, excluding the governing body of a municipally owned electric utility that has not opted for customer choice or the body vested with power to manage and operate a municipally owned electric utility that has not opted for customer choice, may not make rules or issue orders regulating competitive electric services, prices, or competitors or restricting or conditioning competition except as authorized in this title and may not discriminate against any participant or type of participant during the transition to a competitive market and in the competitive market.

(d) Regulatory authorities, excluding the governing body of a municipally owned electric utility that has not opted for customer choice or the body vested with power to manage and operate a municipally owned electric utility that has not opted for customer choice, shall authorize or order competitive rather than regulatory methods to achieve the goals of this chapter to the greatest extent feasible and shall adopt rules and issue orders that are both practical and limited so as to impose the least impact on competition.

(e) Judicial review of competition rules adopted by the commission shall be conducted under Chapter 2001, Government Code, except as otherwise provided by this chapter. Judicial review of the validity of competition rules shall be commenced in the Court of Appeals for the Third Court of Appeals District and shall be limited to the commission's rulemaking record. The rulemaking record consists of:

(1) the notice of the proposed rule;

(2) the comments of all interested persons;

(3) all studies, reports, memoranda, or other materials on which the commission relied in adopting the rule; and

(4) the order adopting the rule.

(f) A person who challenges the validity of a competition rule must file a notice of appeal with the court of appeals and serve the notice on the commission not later than the 15th day after the date on which the rule as adopted is published in the Texas Register. The notice of appeal shall designate the person challenging the rule as the appellant and the commission as the appellee. The commission shall prepare the rulemaking record and file it with the court of appeals not later than the 30th day after the date the notice of appeal is served on the commission. The court of appeals shall hear and determine each appeal as expeditiously as possible with lawful precedence over other matters. The appellant, and any person who is permitted by the court to intervene in support of the appellant's claims, shall file and serve briefs not later than the 30th day after the date the commission files the rulemaking record. The commission, and any person who is permitted by the court to intervene in support of the rule, shall file and serve briefs not later than the 60th day after the date the appellant files the appellant's brief. The court of appeals may, on its own motion or on motion of any person for good cause, modify the filing deadlines prescribed by this subsection. The court of appeals shall render judgment affirming the rule or reversing and, if appropriate on reversal, remanding the rule to the commission for further proceedings, consistent with the court's opinion and judgment. The Texas Rules of

Appellate Procedure apply to an appeal brought under this section to the extent not inconsistent with this section.

Sec. 39.002. APPLICABILITY. This chapter, other than Sections 39.155, 39.157(e), 39.203, 39.903, and 39.904, does not apply to a municipally owned utility or an electric cooperative. Sections 39.157(e), 39.203, and 39.904, however, apply only to a municipally owned utility or an electric cooperative that is offering customer choice. If there is a conflict between the specific provisions of this chapter and any other provisions of this title, except for Chapters 40 and 41, the provisions of this chapter control.

Sec. 39.003. CONTESTED CASES. Unless specifically provided otherwise, each commission proceeding under this chapter, other than a rulemaking proceeding, report, notification, or registration, shall be conducted as a contested case and the burden of proof is on the incumbent electric utility.

[Sections 39.004-39.050 reserved for expansion]

SUBCHAPTER B. TRANSITION TO COMPETITIVE RETAIL ELECTRIC MARKET

Sec. 39.051. UNBUNDLING. (a) On or before September 1, 2000, each electric utility shall separate from its regulated utility activities its customer energy services business activities that are otherwise also already widely available in the competitive market.

(b) Not later than January 1, 2002, each electric utility shall separate its business activities from one another into the following units:

(1) a power generation company;

(2) a retail electric provider; and

(3) a transmission and distribution utility.

(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.

(d) Each electric utility shall unbundle under this section in a manner that provides for a separation of personnel, information flow, functions, and operations, consistent with Section 39.157(d).

(e) Each electric utility shall file with the commission a plan to implement this section by January 10, 2000.

(f) The commission shall adopt the utility's plan for business separation required by Subsection (b), adopt the plan with changes, or reject the plan and require the utility to file a new plan.

(g) Transactions by electric utilities involving sales, transfers, or other disposition of assets to accomplish the purposes of this section are not subject to Section 14.101, 35.034, or 35.035.

Sec. 39.052. FREEZE ON EXISTING RETAIL BASE RATE TARIFFS. (a) Until January 1, 2002, an electric utility shall provide retail electric service within its certificated service area in accordance with the electric utility's retail base rate tariffs in effect on September 1, 1999, including its purchased power cost recovery factor.

(b) During the freeze period, an electric utility may not increase its retail base rates above the rates provided by this section except for losses caused by force majeure as provided by Section 39.055.

(c) Notwithstanding any other provision of this title, during the freeze period the regulatory authority may not reduce the retail base rates of an electric utility, except as may be ordered as stipulated to by an electric utility in a proceeding for which a final order had not been issued by January 1, 1999.

(d) During the freeze period, the retail base rates, overall revenues, return on invested capital, and net income of an electric utility are not subject to complaint, hearing, or determination as to reasonableness.

(e) An electric utility that has a rate proceeding pending before the commission as of January 2, 1999, shall provide service in accordance with the tariffs approved in that proceeding from the date of approval until the end of the freeze period.

(f) Nothing in this section affects the authority of the commission to fulfill its obligations under Section 39.262.

(g) Nothing in this section shall deny a utility its right to have the commission conduct proceedings and issue a final order pertaining to any matter that may be remanded to the commission by a court having jurisdiction, except that the final order may not affect the rates charged to customers during the freeze period but shall be taken into account during the utility's true-up proceeding under Section 39.262.

(h) Nothing in this title shall be construed to prevent an electric utility or a transmission and distribution utility from filing, and the commission from approving, a change in wholesale transmission service rates during the freeze period.

Sec. 39.053. COST RECOVERY ADJUSTMENTS. This subchapter does not limit or alter the ability of an electric utility during the freeze period to revise its fuel factor or to reconcile fuel expenses and to either refund fuel overcollections or surcharge fuel undercollections to customers, as authorized by its tariffs and Sections 36.203 and 36.205.

Sec. 39.054. RETAIL ELECTRIC SERVICE DURING FREEZE PERIOD. (a) An electric utility shall provide retail electric service during the freeze period in accordance with any contract terms applicable to a particular retail customer approved by the regulatory authority and in effect on December 31, 1998.

(b) Nothing in Sections 39.052(c) and (d) shall be construed to restrict any customer's right to complain during the freeze period to the regulatory authority regarding the quality of retail electric service provided by the electric utility or the applicability of an electric utility's particular tariff to the customer.

(c) Nothing in this title shall be construed to restrict an electric utility, voluntarily and at its sole discretion, from offering new services or new tariff options to its customers during the freeze period, consistent with Section 39.051(a).

(d) Any offering of new services or tariff options under this section shall be equal to or greater than an electric utility's long-run marginal cost and may not be unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive.

(e) Revenue from any new offering under this section shall be accounted for in a manner consistent with Section 36.007.

Sec. 39.055. FORCE MAJEURE. (a) An electric utility may recover losses resulting from force majeure through an increase in its retail base rates during the freeze period.

(b) Notwithstanding Subchapter C, Chapter 36, the regulatory authority, after a hearing to determine the electric utility's losses from force majeure, shall permit the utility to fully collect any approved force majeure increase through an appropriate customer surcharge mechanism.

(c) For purposes of this section, "force majeure" means a major event or combination of major events, including new or expanded state or federal statutory or regulatory requirements; hurricanes, tornadoes, ice storms, or other natural disasters; or acts of war, terrorism, or civil disturbance, beyond the control of an electric utility that the regulatory authority finds increases the utility's total reasonable and necessary nonfuel costs or decreases the utility's total nonfuel revenues related to the generation and delivery of electricity by more than 10 percent for any calendar year during the freeze period. The term does not include any changes in general economic conditions such as inflation, interest rates, or other factors of general application.

[Sections 39.056-39.100 reserved for expansion]

SUBCHAPTER C. RETAIL COMPETITION

Sec. 39.101. CUSTOMER SAFEGUARDS. (a) Before customer choice begins on January 1, 2002, the commission shall ensure that retail customer protections are established that entitle a customer:

(1) to safe, reliable, and reasonably priced electricity, including protection against service disconnections in extreme weather or in cases of medical emergency or nonpayment for unrelated services;

(2) to privacy of customer consumption and credit information;

(3) to bills presented in a clear format and in language readily understandable by customers;

(4) to the option to have all electric services on a single bill, except in those instances where multiple bills are allowed under Chapters 40 and 41;

(5) to protection from discrimination on the basis of race, color, sex, nationality, religion, or marital status;

(6) to accuracy of metering and billing;

(7) to information in English and Spanish and any other language as necessary concerning rates, key terms and conditions, in a standard format that will permit comparisons between price and service offerings, and the environmental impact of certain production facilities;

(8) to information in English and Spanish and any other language as necessary concerning low-income assistance programs and deferred payment plans; and

(9) to other information or protections necessary to ensure high-quality service to customers.

(b) A customer is entitled:

(1) to be informed about rights and opportunities in the transition to a competitive electric industry;

(2) to choose the customer's retail electric provider consistent with this chapter, to have that choice honored, and to assume that the customer's chosen provider will not be changed without the customer's informed consent;

(3) to have access to providers of energy efficiency services, to on-site distributed generation, and to providers of energy generated by renewable energy resources;

(4) to be served by a provider of last resort that offers a commission-approved standard service package;

(5) to receive sufficient information to make an informed choice of service provider;

(6) to be protected from unfair, misleading, or deceptive practices, including protection from being billed for services that were not authorized or provided; and

(7) to have an impartial and prompt resolution of disputes with its chosen retail electric provider and transmission and distribution utility.

(c) A retail electric provider, power generation company, aggregator, or other entity that provides retail electric service may not refuse to provide retail electric or electric generation service or otherwise discriminate in the provision of electric service to any customer because of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, or familial status. A retail electric provider, power generation company, aggregator, or other entity that provides retail electric service may not refuse to provide retail electric or electric generation service to a customer because the customer is located in an economically distressed geographic area or qualifies for low-income affordability or energy efficiency services. The commission shall require a provider to comply with this subsection as a condition of certification or registration.

(d) A retail electric provider, power generation company, aggregator, or other entity that provides retail electric service shall submit reports to the commission and the office annually and on request relating to the person's compliance with this section. The commission by rule shall specify the form in which a report must be submitted. A report must include:

(1) information regarding the extent of the person's coverage;

(2) information regarding the service provided, compiled by zip code and census tract; and

(3) any other information the commission or the office considers relevant to determine compliance.

(e) The commission has the authority to adopt and enforce such rules as may be necessary or appropriate to carry out Subsections (a)-(d), including rules for minimum service standards for a retail electric provider relating to customer deposits and the extension of credit, switching fees, levelized billing programs, interconnection and use of on-site generation, termination of service, and quality of service. The commission has jurisdiction over all providers of electric service in enforcing Subsections (a)-(d) and may assess civil and administrative penalties under Section 15.023 and seek civil penalties under Section 15.028.

(f) On or before June 30, 2001, the commission shall modify its current rules regarding customer protections to ensure that at least the same level of customer protection against potential abuses and the same quality of service that exists on December 31, 1999, is maintained in a restructured electric industry.

(g) Compliance with Subsections (a)-(e) of this section by a provider of electric service which is a municipally owned utility shall be administered solely by the governing body of the municipally owned utility, which shall adopt, implement, and enforce, as to the municipally owned utility, rules having the effect of accomplishing the objectives of Subsections (a)-(e). Reports containing the information required by Subsection (d) shall be filed by the municipally owned utility with the governing body.

Sec. 39.102. RETAIL CUSTOMER CHOICE. (a) Each retail customer in this state, except retail customers of electric cooperatives and municipally owned utilities that have not opted for customer choice, shall have customer choice on and after January 1, 2002.

(b) The affiliated retail electric provider of the electric utility serving a retail customer on December 31, 2001, may continue to serve that customer until the customer chooses service from a different retail electric provider, an electric

cooperative offering customer choice, or a municipally owned utility offering customer choice.

(c) An electric utility that has in effect a systemwide freeze for residential and commercial customers in effect September 1, 1997, extending beyond December 31, 2001, that has been found by a regulatory authority to be in the public interest is not subject to this chapter. At the expiration of the utility's freeze period, the utility shall be subject to this chapter and, at that time, has no claim for stranded cost recovery.

Sec. 39.1025. LIMITATIONS ON TELEPHONE SOLICITATION. (a) A person may not make or cause to be made a telephone solicitation to an electricity customer who has given notice to the commission of the customer's objection to receiving telephone solicitations relating to the customer's choice of retail electric providers.

(b) The commission shall establish and provide for the operation of a database to compile a list of customers who object to receiving telephone solicitations. The commission may operate the database or contract with another entity to operate the database.

(c) A customer shall pay a fee of not more than $5 for inclusion in the database. The commission shall prescribe the amount of the fee.

Sec. 39.103. COMMISSION AUTHORITY TO DELAY COMPETITION AND SET NEW RATES. If the commission determines under Section 39.104 that a power region is unable to offer fair competition and reliable service to all retail customer classes on January 1, 2002, the commission shall delay customer choice for the power region and may on or after January 1, 2002, establish new rates for all electric utilities in the power region as provided by Chapter 36.

Sec. 39.104. CUSTOMER CHOICE PILOT PROJECTS. (a) Customer choice pilot projects may be used to allow the commission to evaluate the ability of each power region and electric utility to implement customer choice. However, in a multiply certificated area, an electric utility may not include customers that were served by an electric cooperative or a municipally owned utility on May 1, 1999.

(b) The commission shall require each electric utility to offer customer choice in its service area within this state amounting to five percent of the utility's combined load of all customer classes within this state beginning on June 1, 2001.

(c) The load designated for customer choice under this section shall be distributed among all customer classes of a utility consistent with the purpose of this section and subject to commission approval.

(d) Customers participating in a pilot project under this section may buy electric energy from any retail electric provider certified by the commission under Section 39.352, including an affiliated retail electric provider; provided, however, that a retail electric provider may not participate in a pilot project in the certificated service area served by the electric utility with which it is affiliated.

(e) Each utility operating a pilot project under this section shall charge residential and small commercial customers in accordance with Section 39.052.

(f) The commission may prescribe reporting requirements it considers necessary to evaluate a pilot project consistent with the purpose of this section.

(g) Customers having customer choice under this section shall be billed as provided by Section 39.107.

(h) The commission may prescribe terms and conditions it considers necessary to prohibit anticompetitive practices and to encourage customer choice offered under this section.

(i) Notwithstanding any other provision of this title, a retail electric provider participating in a pilot project under this section is not an electric utility or a retail electric utility.

(j) Twenty percent of the load designated for customer choice under this section shall be initially set aside for aggregated loads.

Sec. 39.105. LIMITATION ON SALE OF ELECTRICITY. (a) After January 1, 2002, a transmission and distribution utility may not sell electricity or otherwise participate in the market for electricity except for the purpose of buying electricity to serve its own needs.

(b) A person or retail electric utility may not provide, furnish, or make available electric service at retail within the certificated service area of an electric cooperative that has not adopted customer choice or a municipally owned utility that has not adopted customer choice. However, this subsection does not prohibit the provision of electric service in multiply certificated service areas to customers of any other retail electric utility.

Sec. 39.106. PROVIDER OF LAST RESORT. (a) The commission shall designate retail electric providers in areas of the state in which customer choice is in effect to serve as providers of last resort.

(b) A provider of last resort shall offer a standard retail service package for each class of customers designated by the commission at a fixed, nondiscountable rate approved by the commission.

(c) A provider of last resort shall provide the standard retail service package to any requesting customer in the territory for which it is the provider of last resort.

(d) The commission shall designate the provider or providers of last resort not later than June 1, 2001.

(e) The commission shall determine the procedures and criteria, which may include the solicitation of bids, for designating a provider or providers of last resort. The commission may redesignate the provider of last resort according to a schedule it considers appropriate.

(f) In the event that no retail electric provider applies to be the provider of last resort for a given area of the state on reasonable terms and conditions, the commission may require a retail electric provider to become the provider of last resort as a condition of receiving or maintaining a certificate under Section 39.352.

(g) In the event that a retail electric provider fails to serve any or all of its customers, the provider of last resort shall offer that customer the standard retail service package for that customer class with no interruption of service to any customer.

Sec. 39.107. METERING AND BILLING SERVICES. (a) On introduction of customer choice in a service area, metering services for the area shall continue to be provided by the transmission and distribution utility affiliate of the electric utility that was serving the area before the introduction of customer choice. Metering services provided to commercial and industrial customers shall be provided on a competitive basis beginning on January 1, 2004.

(b) Metering and billing services provided to residential customers shall continue to be provided by the transmission and distribution utility affiliate of the electric utility that was serving the area before the introduction of customer choice until the later of

September 1, 2005, or the date on which at least 40 percent of those residential customers are taking service from unaffiliated retail electric providers. Metering and billing services provided to residential customers shall be governed by the customer safeguards adopted by the commission under Section 39.101.

(c) Beginning on the date of introduction of customer choice in a service area, tenants of leased or rented property that is separately metered shall have the right to choose a retail electric provider, an electric cooperative offering customer choice, or a municipally owned utility offering customer choice, and the owner of the property must grant reasonable and nondiscriminatory access to transmission and distribution utilities, retail electric providers, electric cooperatives, and municipally owned utilities for metering purposes.

(d) Beginning on the date of introduction of customer choice in a service area, a transmission and distribution utility, or an electric cooperative or municipally owned utility providing the customer's energy requirements shall bill a customer's retail electric provider for nonbypassable delivery charges as determined under Section 39.201. The retail electric provider or the electric cooperative or municipally owned utility, as appropriate, must pay these charges.

(e) A transmission and distribution utility may bill retail customers at the request of a retail electric provider or, if an electric cooperative or municipally owned utility is providing the customer's energy requirements, at the request of the electric cooperative or municipally owned utility. A transmission and distribution utility that provides billing service on such request shall offer billing service on comparable terms and conditions to those of any such requesting retail electric provider or, as applicable, the electric cooperative or municipally owned utility providing energy requirements to a customer served by the transmission and distribution utility.

(f) Beginning on the date of introduction of customer choice in a service area, any charges for metering and billing services shall comply with rules adopted by the commission relating to nondiscriminatory rates of service.

(g) Metered electric service sold to residential customers on a prepaid basis may not be sold at a price that is higher than the price charged by the provider of last resort.

Sec. 39.108. CONTRACTUAL OBLIGATIONS. This chapter may not:

(1) interfere with or abrogate the rights or obligations of any party, including a retail or wholesale customer, to a contract with an investor-owned electric utility, river authority, municipally owned utility, or electric cooperative;

(2) interfere with or abrogate the rights or obligations of a party under a contract or agreement concerning certificated utility service areas; or

(3) result in a change in wholesale power costs to wholesale customers in Texas purchasing electricity under wholesale power contracts the pricing provisions of which are based on formulary rates, fuel adjustments, or average system costs.

Sec. 39.109. NEW OWNER OR SUCCESSOR. (a) To ensure the continued safe and reliable operation of electric generating facilities, the commission shall require a generating facility that is transferred to a new owner or successor in interest between June 1, 1999, and January 1, 2002, to continue to be operated and maintained by the same operating personnel for not less than two years, except that the personnel may be dismissed for cause.

(b) This section shall apply only if the facility is actually operated during the two-year period after the sale.

(c) This section shall not require that the purchaser cause the facility to be operated in whole or in part, nor shall it preclude a temporary closure of the facility during the two-year period.

(d) This section shall not create any obligation extending after the two-year period following the sale.

[Sections 39.110-39.150 reserved for expansion]

SUBCHAPTER D. MARKET STRUCTURE

Sec. 39.151. ESSENTIAL ORGANIZATIONS. (a) A power region must establish one or more independent organizations to perform the following functions:

(1) ensure access to the transmission and distribution systems for all buyers and sellers of electricity on nondiscriminatory terms;

(2) ensure the reliability and adequacy of the regional electrical network;

(3) ensure that information relating to a customer's choice of retail electric provider is conveyed in a timely manner to the persons who need that information; and

(4) ensure that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers in the region.

(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.

(d) 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. The procedures shall be subject to commission oversight and review.

(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.

(f) In implementing this section, the commission may cooperate with the utility regulatory commission of another state or the federal government and may hold a joint hearing or make a joint investigation with that commission.

(g) 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:

(1) the chairman of the commission as an ex officio nonvoting member;

(2) the counsellor as an ex officio voting member;

(3) the director of the independent system operator as an ex officio voting member;

(4) four representatives of the power generation sector as voting members;

(5) four representatives of the transmission and distribution sector as voting members;

(6) four representatives of the power sales sector as voting members; and

(7) 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.

(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.

(i) The commission may delegate authority to the existing independent system operator in ERCOT to enforce operating standards within the ERCOT regional electrical network and to establish and oversee transaction settlement procedures. The commission may establish the terms and conditions for the ERCOT independent system operator's authority to oversee utility dispatch functions after the introduction of customer choice.

(j) A retail electric provider, municipally owned utility, electric cooperative, power marketer, transmission and distribution utility, or power generation company shall observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent system operator in ERCOT. Failure to comply with this subsection may result in the revocation, suspension, or amendment of a certificate as provided by Section 39.356 or in the imposition of an administrative penalty as provided by Section 39.357.

(k) To the extent the commission has authority over an independent organization outside of ERCOT, the commission may delegate authority to the independent organization consistent with Subsection (i).

(l) No operational criteria, protocols, or other requirement established by an independent organization, including the ERCOT independent system operator, may adversely affect or impede any manufacturing or other internal process operation associated with an industrial generation facility, except to the minimum extent necessary to assure reliability of the transmission network.

(m) A power region outside of ERCOT shall be deemed to have met the requirement to establish an independent organization to perform the transmission functions specified in Subsection (a) if the Federal Energy Regulatory Commission has approved a regional transmission organization for the region and found that the regional transmission organization meets the requirements of Subsection (a).

Sec. 39.152. QUALIFYING POWER REGIONS. (a) The commission shall certify a power region if:

(1) a sufficient number of interconnected utilities in the power region fall under the operational control of an independent organization as described by Section 39.151;

(2) the power region has a generally applicable tariff that guarantees open and nondiscriminatory access for all users to transmission and distribution facilities in the power region as provided by Section 39.203; and

(3) no person owns and controls more than 20 percent of the installed generation capacity located in or capable of delivering electricity to a power region, as determined according to Section 39.154.

(b) In determining whether a power region not entirely within the state meets the requirements of this section, the commission shall consider the extent to which the

available transmission facilities limit the delivery of electricity from generators located outside the state to areas of the power region within the state.

(c) For a power region outside of ERCOT, the requirements of Subsection (a)(2) shall be deemed to have been met if power aggregating to approximately 50,000 megawatts can be delivered to the portion of the power region that is in this state through the payment of not more than one transmission tariff.

(d) For a power region outside of ERCOT, a power generation company that is affiliated with an electric utility may elect to demonstrate that it meets the requirements of Subsection (a)(3) by showing that it does not own and control more than 20 percent of the installed capacity in a geographic market that includes the power region, using the guidelines, standards, and methods adopted by the Federal Energy Regulatory Commission.

(e) In a power region outside of ERCOT, if customer choice is introduced before the requirements of Subsection (a) are met, an affiliated retail electric provider may not compete for retail customers in any area of the power region that is within this state and outside of the affiliated transmission and distribution utility's certificated service area unless the affiliated power generation company makes a commitment to maintain and does maintain rates that are based on cost of service for any electric cooperative or municipal utility that was a wholesale customer on January 1, 1999, and was purchasing power at rates that were based on cost of service. This subsection requires a power generation company to sell power at rates that are based on cost of service, notwithstanding the expiration of a contract for that service, until the requirements of Subsection (a) are met.

(f) If the commission determines that the available transmission facilities limit the delivery of electricity from generators located outside this state to areas of the power region within this state and that the requirements of Subsection (a) have not been met for that region, any utility-affiliated power generation company in the power region shall maintain adequate supply and facilities to provide electric service to persons who were or would have been retail customers of the affiliated retail electric provider on December 31, 2001. The obligation provided by this subsection remains in effect until the commission determines that the available transmission facilities do not limit the delivery of electricity from generators located outside this state to the power region or that the requirements of Subsection (a) have been met for the region.

Sec. 39.153. CAPACITY AUCTION. (a) Each electric utility subject to this section shall sell at auction, at least 60 days before the date set for customer choice to begin, entitlements to at least 15 percent of the electric utility's Texas jurisdictional installed generation capacity. For the purposes of this section, the term "electric utility" includes any affiliated power generation company that is unbundled from the electric utility in accordance with Section 39.051, but does not include any entity owning less than 400 megawatts of installed generation capacity.

(b) The obligation to auction the entitlements shall continue until the earlier of 60 months after the date customer choice is introduced or the date the commission determines that 40 percent or more of the electric power consumed by residential and small commercial customers within the affiliated transmission and distribution utility's certificated service area before the onset of customer choice is provided by nonaffiliated retail electric providers.

(c) An affiliate of the electric utility selling entitlements in the auction required by this section may not purchase entitlements from the affiliated electric utility at the

auction. Entitlements may only be purchased by entities lawfully able to sell electricity in Texas.

(d) An electric utility may choose to auction additional entitlements beyond those required by Subsection (a) or continue to auction entitlements after the period required by Subsection (b) in order to comply with Section 39.154.

(e) The commission shall adopt rules by December 31, 2000, that define the scope of the capacity entitlements to be auctioned. Entitlements may be auctioned in blocks of less than 15 percent. The rules shall state the minimum amount of capacity that can be sold at auction as an entitlement. At a minimum, the rules shall provide that the entitlements:

(1) may be sold and purchased in periods of not less than one month nor more than four years;

(2) may be resold to any lawful purchaser, except for a retail electric provider affiliated with the electric utility that originally auctioned the entitlement;

(3) include no possessory interest in the unit from which the power is produced;

(4) include no obligations of a possessory owner of an interest in the unit from which the power is produced; and

(5) give the purchaser the right to designate the dispatch of the entitlement, subject to planned outages, outages beyond the control of the utility operating the unit, and other considerations subject to the oversight of the applicable independent organization.

(f) The commission shall adopt rules by December 31, 2000, that prescribe the procedure for the auction of the entitlements. The rules shall include:

(1) a process for conducting the auction or auctions, including who shall conduct it, how often it shall be conducted, and how winning bidders shall be determined;

(2) a process for the electric utility to designate which generation units or combination of units are offered for auction;

(3) a provision for the utility to establish an opening bid price based on the electric utility's expected cost, with the commission prescribing the means for determining the opening bid price, which may not include return on equity; and

(4) a provision that allows a bidder to specify the magnitude and term of the entitlement, subject to the conditions established in Subsection (e).

(g) In adopting the process under Subsection (f)(2), the commission shall consider the furtherance of the development of the competitive market, the cost of transmission, physical constraints of the transmission system, the proximity of the generation to load, economic efficiency, and any other factors the commission finds relevant. The process may provide for commission approval of the designation before auction. The commission may consult with the applicable independent organization to develop the process.

Sec. 39.154. LIMITATION OF OWNERSHIP OF INSTALLED CAPACITY. (a) Beginning on the date of introduction of customer choice, a power generation company may not own and control more than 20 percent of the installed generation capacity located in, or capable of delivering electricity to, a power region.

(b) In a power region not entirely within the state, the commission may waive or modify the requirement in Subsection (a) on a finding of good cause.

(c) In determining the percentage shares of installed generation capacity under this section, the commission shall combine capacity owned and controlled by a power

generation company and any entity that is affiliated with that power generation company within the power region, reduced by the installed generation capacity of those facilities that are made subject to capacity auctions under Sections 39.153(a) and (d).

(d) In this chapter, "installed generation capacity" means all potentially marketable electric generation capacity, including the capacity of:

(1) generating facilities that are connected with a transmission or distribution system;

(2) generating facilities used to generate electricity for consumption by the person owning or controlling the facility; and

(3) generating facilities that will be connected with a transmission or distribution system and operating within 12 months.

(e) In determining the percentage shares of installed generation capacity owned and controlled by a power generation company under this section and Section 39.156, the commission shall, for purposes of calculating the numerator, reduce the installed generation capacity owned and controlled by that power generation company by the installed generation capacity of any "grandfathered facility" within an ozone nonattainment area as of September 1, 1999, for which that power generation company has commenced complying or made a binding commitment to comply with Section 39.264.

Sec. 39.155. COMMISSION ASSESSMENT OF MARKET POWER. (a) Each person, municipally owned utility, electric cooperative, and river authority that owns generation facilities and offers electricity for sale in this state shall report to the commission its installed generation capacity, the total amount of capacity available for sale to others, the total amount of capacity under contract to others, the total amount of capacity dedicated to its own use, its annual wholesale power sales in the state, its annual retail power sales in the state, and any other information necessary for the commission to assess market power or the development of a competitive retail market in the state. The commission shall by rule prescribe the nature and detail of the reporting requirements and shall administer those reporting requirements in a manner that ensures the confidentiality of competitively sensitive information.

(b) The ERCOT independent system operator shall submit an annual report to the commission identifying existing and potential transmission and distribution constraints and system needs within ERCOT, alternatives for meeting system needs, and recommendations for meeting system needs. The first report shall be submitted on or before October 1, 1999. Subsequent reports shall be submitted by January 15 of each year or as determined necessary by the commission.

(c) Before the date of introduction of customer choice in a power region other than ERCOT, each electric utility owning transmission and distribution facilities in that region shall submit an annual report to the commission identifying existing and potential transmission and distribution constraints and system needs in the power region, alternatives for meeting system needs, and recommendations for meeting system needs as directed by the commission.

(d) In a qualifying power region, the reports required by Subsections (b) and (c) shall be submitted by the independent organization or organizations having authority over the power region or discrete areas thereof.

Sec. 39.156. MARKET POWER MITIGATION PLAN. (a) In this section, "market power mitigation plan" or "plan" means a written proposal by an electric

utility or a power generation company for reducing its ownership and control of installed generation capacity as required by Section 39.154.

(b) An electric utility or power generation company owning and controlling more than 20 percent of the generation capacity located in, or capable of delivering electricity to, a power region shall file a market power mitigation plan with the commission not later than December 1, 2000.

(c) The plan may provide for:

(1) the sale of generation assets to a nonaffiliated person;

(2) the exchange of generation assets with a nonaffiliated person located in a different power region;

(3) the auctioning of generation capacity entitlements as part of a capacity auction required by Section 39.153;

(4) the sale of the right to capacity to a nonaffiliated person for at least four years; or

(5) any reasonable method of mitigation.

(d) For the purposes of this section, generation capacity shall be net of the generation capacity subject to an auction under Section 39.153.

(e) The plan shall be in a form prescribed by the commission and shall provide information the commission finds reasonably necessary to evaluate the plan.

(f) The commission shall approve, modify, or reject a plan within 180 days after the date of a filing under Subsection (b). The commission may not modify a plan to require divestiture by the electric utility or the power generation company.

(g) In reaching its determination under Subsection (f), the commission shall consider:

(1) the degree to which the electric utility's or power generation company's stranded costs, if any, are minimized;

(2) whether on disposition of the generation assets the reasonable value is likely to be received;

(3) the effect of the plan on the electric utility's or power generation company's federal income taxes;

(4) the effect of the plan on current and potential competitors in the generation market; and

(5) whether the plan is consistent with the public interest.

(h) An electric utility or power generation company with an approved mitigation plan may request to amend or repeal its plan. On a showing of good cause, the commission shall modify or repeal an electric utility's or power generation company's mitigation plan.

(i) If an electric utility's or a power generation company's market power mitigation plan is not approved before January 1 of the year it is to take effect, the commission may order the electric utility or power generation company to auction generation capacity entitlements according to Section 39.153, subject to commission approval, of any capacity exceeding the maximum allowable capacity prescribed by Section 39.154 until the time a mitigation plan is approved.

(j) An auction under Subsection (i) shall be held not later than 60 days after the date the order is entered.

Sec. 39.157. COMMISSION AUTHORITY TO ADDRESS MARKET POWER. (a) The commission shall monitor market power associated with the generation, transmission, distribution, and sale of electricity in this state. On a finding that market

power abuses or other violations of this section are occurring, the commission shall require reasonable mitigation of the market power by ordering the construction of additional transmission or distribution facilities, by seeking an injunction or civil penalties as necessary to eliminate or to remedy the market power abuse or violation as authorized by Chapter 15, by imposing an administrative penalty as authorized by Chapter 15, or by suspending, revoking, or amending a certificate or registration as authorized by Section 39.356. Section 15.024(c) does not apply to an administrative penalty imposed under this section. For purposes of this subchapter, market power abuses are practices by persons possessing market power that are unreasonably discriminatory or tend to unreasonably restrict, impair, or reduce the level of competition, including practices that tie unregulated products or services to regulated products or services or unreasonably discriminate in the provision of regulated services. For purposes of this section, "market power abuses" include predatory pricing, withholding of production, precluding entry, and collusion. A violation of the code of conduct provided by Subsection (d) that materially impairs the ability of a person to compete in a competitive market shall be deemed to be an abuse of market power. The possession of a high market share in a market open to competition may not, of itself, be deemed to be an abuse of market power; however, this sentence shall not affect the application of state and federal antitrust laws.

(b) Beginning on the date of introduction of customer choice, a person that owns generation facilities may not own transmission or distribution facilities in this state except for those facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under Section 31.002. However, nothing in this chapter shall prohibit a power generation company affiliated with a transmission and distribution utility from owning generation facilities.

(c) The commission shall monitor market shares of installed capacity to ensure that the limitations in Section 39.154 are not exceeded. If the commission finds that a person has violated a limitation in Section 39.154, the commission shall order the person to file, within 60 days of the date of the order, a market power mitigation plan consistent with the requirements in Section 39.156.

(d) Not later than January 10, 2000, the commission shall adopt rules and enforcement procedures to govern transactions or activities between a transmission and distribution utility and its competitive affiliates to avoid potential market power abuses and cross-subsidizations between regulated and competitive activities both during the transition to and after the introduction of competition. Nothing in this subsection is intended to affect or modify the obligations or duties relating to any rules or standards of conduct that may apply to a utility or the utility's affiliates under orders or regulations of the Federal Energy Regulatory Commission or the Securities and Exchange Commission. A utility that is subject to statutes or regulations in other states that conflict with a provision of this section may petition the commission for a waiver of the conflicting provision on a showing of good cause. The rules adopted under this section shall ensure that:

(1) a utility makes any products and services, other than corporate support services, that it provides to a competitive affiliate available, contemporaneously and in the same manner, to the competitive affiliate's competitors and applies its tariffs, prices, terms, conditions, and discounts for those products and services in the same manner to all similarly situated entities;

(2) a utility does not:

(A) give a competitive affiliate or a competitive affiliate's customers any preferential advantage, access, or treatment regarding services other than corporate support services; or

(B) act in a manner that is discriminatory or anticompetitive with respect to a nonaffiliated competitor of a competitive affiliate;

(3) a utility providing electric transmission or distribution services:

(A) provides those services on nondiscriminatory terms and conditions;

(B) does not establish as a condition for the provision of those services the purchase of other goods or services from the utility or the competitive affiliate; and

(C) does not provide competitive affiliates preferential access to the utility's transmission and distribution systems or to information about those systems;

(4) a utility does not release any proprietary customer information to a competitive affiliate or any other entity, other than an independent organization as defined by Section 39.151 or a provider of corporate support services for the purposes of providing the services, without obtaining prior verifiable authorization, as determined from the commission, from the customer;

(5) a utility does not:

(A) communicate with a current or potential customer about products or services offered by a competitive affiliate in a manner that favors a competitive affiliate; or

(B) allow a competitive affiliate, before September 1, 2005, to use the utility's corporate name, trademark, brand, or logo unless the competitive affiliate includes on employee business cards and in its advertisements of specific services to existing or potential residential or small commercial customers locating within the utility's certificated service area a disclaimer that states, "(Name of competitive affiliate) is not the same company as (name of utility) and is not regulated by the Public Utility Commission of Texas, and you do not have to buy (name of competitive affiliate)'s products to continue to receive quality regulated services from (name of utility).";

(6) a utility does not conduct joint advertising or promotional activities with a competitive affiliate in a manner that favors the competitive affiliate;

(7) a utility is a separate, independent entity from any competitive affiliates and, except as provided by Subdivisions (8) and (9), does not share employees, facilities, information, or other resources, other than permissible corporate support services, with those competitive affiliates unless the utility can prove to the commission that the sharing will not compromise the public interest;

(8) a utility's office space is physically separated from the office space of the utility's competitive affiliates by being located in separate buildings or, if within the same building, by a method such as having the offices on separate floors or with separate access, unless otherwise approved by the commission;

(9) a utility and a competitive affiliate:

(A) may, to the extent the utility implements adequate safeguards precluding employees of a competitive affiliate from gaining access to information in a manner inconsistent with Subsection (g) or (i), share common officers and directors, property, equipment, offices to the extent consistent with Subdivision (8), credit, investment, or financing arrangements to the extent consistent with Subdivision (17), computer systems, information systems, and corporate support services; and

(B) are not required to enter into prior written contracts or competitive solicitations for non-tariffed transactions between the utility and the competitive affiliate, except that the commission by rule may require the utility and the competitive affiliate to enter into prior written contracts or competitive solicitations for certain classes of transactions, other than corporate support services, that have a per unit value of more than $75,000 or that total more than $1 million;

(10) a utility does not temporarily assign, for less than one year, employees engaged in transmission or distribution system operations to a competitive affiliate unless the employee does not have knowledge of information that is intended to be protected under this section;

(11) a utility does not subsidize the business activities of an affiliate with revenues from a regulated service;

(12) a utility and its affiliates fully allocate costs for any shared services, corporate support services, and other items described by Subdivisions (8) and (9);

(13) a utility and its affiliates keep separate books of accounts and records and the commission may review records relating to a transaction between a utility and an affiliate;

(14) assets transferred or services provided between a utility and an affiliate, other than transfers that facilitate unbundling under Section 39.051 or asset valuation under Section 39.262, are priced at a level that is fair and reasonable to the customers of the utility and reflects the market value of the assets or services or the utility's fully allocated cost to provide those assets or services;

(15) regulated services that a utility provides on a routine or recurring basis are included in a tariff that is subject to commission approval;

(16) each transaction between a utility and a competitive affiliate is conducted at arm's length; and

(17) a utility does not allow an affiliate to obtain credit under an arrangement that would include a specific pledge of assets in the rate base of the utility or a pledge of cash reasonably necessary for utility operations.

(e) The commission shall by rule establish a code of conduct that must be observed by electric cooperatives and municipally owned utilities and their affiliates to protect against anticompetitive practices. The rules adopted by the commission under this subsection shall be consistent with Chapters 40 and 41 and may not be more restrictive than the rules adopted under Subsection (d).

(f) Following review of the annual report submitted to it under Sections 39.155(b) and (c), the commission shall determine whether specific transmission or distribution constraints or bottlenecks within this state give rise to market power in specific geographic markets in the state. The commission, on a finding that specific transmission or distribution constraints or bottlenecks within this state give rise to market power, may order reasonable mitigation of that potential market power by ordering, under Section 39.203(e), one or more electric utilities or transmission and distribution utilities to construct additional transmission or distribution capacity, or both, subject to the certification provisions of this title.

(g) The sharing of corporate support services in accordance with this section may not allow or provide a means for the transfer of confidential information from a utility to an affiliate, create the opportunity for preferential treatment or an unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates.

(h) A utility or competitive affiliate may not circumvent the provisions or the intent of the provisions of Subsection (d) by using any utility affiliate to provide information, services, or subsidies between the utility and a competitive affiliate.

(i) In this section:

(1) "Competitive affiliate" means an affiliate of a utility that provides services or sells products in a competitive energy-related market in this state, including telecommunications services, to the extent those services are energy related.

(2) "Corporate support services" means services shared by a utility, its parent holding company, or a separate affiliate created to perform corporate support services, with its affiliates of joint corporate oversight, governance, support systems, and personnel. Examples of services that may be shared, to the extent the services comply with the requirements prescribed by Subsections (d) and (g), include human resources, procurement, information technology, regulatory services, administrative services, real estate services, legal services, accounting, environmental services, research and development, internal audit, community relations, corporate communications, financial services, financial planning and management support, corporate services, corporate secretary, lobbying, and corporate planning. Examples of services that may not be shared include engineering, purchasing of electric transmission, transmission and distribution system operations, and marketing.

Sec. 39.158. MERGERS AND CONSOLIDATIONS. (a) An owner of electric generation facilities that offers electricity for sale in the state and proposes to merge, consolidate, or otherwise become affiliated with another owner of electric generation facilities that offers electricity for sale in this state shall obtain the approval of the commission before closing if the electricity offered for sale in the power region by the merged, consolidated, or affiliated entity will exceed one percent of the total electricity for sale in the power region. The approval shall be requested at least 120 days before the date of the proposed closing. The commission shall approve the transaction unless the commission finds that the transaction results in a violation of Section 39.154. If the commission finds that the transaction as proposed would violate Section 39.154, the commission may condition approval of the transaction on adoption of reasonable modifications to the transaction as prescribed by the commission to mitigate potential market power abuses.

(b) Nothing in this chapter shall be construed to confer immunity from state or federal antitrust laws. This chapter is intended to complement other state and federal antitrust provisions. Therefore, antitrust remedies may also be sought in state or federal court to remedy anticompetitive activities.

(c) This section may not be deemed to authorize commission review or approval of transactions entered into between or among municipally owned utilities, river authorities, special districts created by law, or other political subdivisions, whether or not those transactions may be characterized as mergers, consolidations, or other affiliations, when the transaction is authorized or structured under state law.

[Sections 39.159-39.200 reserved for expansion]

SUBCHAPTER E. PRICE REGULATION AFTER COMPETITION

Sec. 39.201. COST OF SERVICE TARIFFS AND CHARGES. (a) Each electric utility shall, on or before April 1, 2000, file proposed tariffs for its proposed transmission and distribution utility.

(b) The filing under this section shall include supporting cost data for determination of nonbypassable delivery charges, which shall be the sum of:

(1) transmission and distribution utility charges by customer class based on a forecasted 2002 test year;

(2) a system benefit fund fee; and

(3) an expected competition transition charge, if any.

(c) Each electric utility shall also identify the unbundled generation and retail energy service costs by customer class.

(d) In accordance with a schedule and procedures it establishes, the commission shall hold a hearing and approve or modify and make effective as of January 1, 2002, the transmission and distribution utility's proposed tariffs for transmission and distribution services, the system benefit fund fee, and the expected competition transition charge as determined under Subsections (g) and (h) and as implemented under Subsections (i)-(l), if any.

(e) The system benefit fund fee shall be that established by the commission under Section 39.903.

(f) The expected competition transition charge shall be that as determined under Subsections (g) and (h) and as implemented under Subsections (i)-(l).

(g) The expected competition transition charge approved by the commission shall be calculated from the amount of stranded costs as defined in Subchapter F that are reasonably projected to exist on the last day of the freeze period modified to reflect any adjustments determined appropriate by the commission under Section 39.261(c).

(h) The electric utility shall use the ECOM administrative model referenced in Section 39.262 to determine estimated stranded costs. The model must include updated company-specific inputs. Natural gas prices used in the model must be market-based natural gas forward prices, where available. Growth rates in generating plant operations and maintenance costs and allocated administrative and general costs shall be benchmarked by comparing those costs to the best available information on cost trends for comparable generating plants. Capital additions shall be benchmarked using the limitation in Section 39.259(b).

(i) An electric utility may:

(1) at any time after the start of the freeze period, securitize 100 percent of its regulatory assets as defined by Section 39.302 and up to 75 percent of its estimated stranded costs as defined by this section and recover those charges through a transition charge, in accordance with a financing order issued by the commission under Section 39.303;

(2) implement, under bond, a nonbypassable charge of up to 100 percent of its estimated stranded costs; or

(3) use a combination of the two methods under Subdivisions (1) and (2).

(j) Any competition transition charge shall be allocated among retail customer classes based on the relevant customer class characteristics as of May 1, 1999, adjusted for normal weather conditions, in accordance with the methodology used to allocate the costs of the underlying assets in the electric utility's most recent commission order addressing rate design, unless the utility has agreed to an alternative allocation of stranded costs in a settlement agreed to as part of a transition plan approved by the commission on or after January 1, 1998, in which case the alternative allocation shall apply.

(k) In determining the length of time over which stranded costs under Subsection (h) may be recovered, the commission shall consider:

(1) the electric utility's rates as of the end of the freeze period;

(2) the sum of the transmission and distribution charges and the system benefit fund fees;

(3) the proportion of estimated stranded costs to the invested capital of the electric utility; and

(4) any other factor consistent with the public interest as expressed in this chapter.

(l) Two years after customer choice is introduced, the stranded cost estimate under this section shall be reviewed and, if necessary, adjusted to reflect a final, actual valuation in the true-up proceeding under Section 39.262. If, based on that proceeding, the competition transition charge is not sufficient, the commission may extend the collection period for the charge or, if necessary, increase the charge. Alternatively, if it is found in the true-up proceeding that the competition transition charge is larger than is needed to recover any remaining stranded costs, the commission may:

(1) reduce the competition transition charge, to the extent it has not been securitized;

(2) reverse, in whole or in part, the depreciation expense that has been redirected under Section 39.256;

(3) reduce the transmission and distribution utility's rates; or

(4) implement a combination of the elements in Subdivisions (1)-(3).

Sec. 39.202. PRICE TO BEAT. (a) From January 1, 2002, until January 1, 2007, an affiliated retail electric provider shall make available to residential and small commercial customers of its affiliated transmission and distribution utility rates that, on a bundled basis, are six percent less than the affiliated electric utility's corresponding average residential and small commercial rates, on a bundled basis, that were in effect on January 1, 1999, adjusted to reflect the fuel factor determined as provided by Subsection (b) and adjusted for any base rate reduction as stipulated to by an electric utility in a proceeding for which a final order had not been issued by January 1, 1999. These rates on a bundled basis shall be known as the "price to beat" for residential and small commercial customers, except that the "price to beat" for a utility is the rate in effect as a result of a settlement approved by the commission after January 1, 1999, if the commission determines that base rates for that utility have been reduced by more than 12 percent as a result of a final order issued by the commission after October 1, 1998.

(b) The commission shall determine the fuel factor for each electric utility as of December 31, 2001.

(c) After the date of customer choice, each affiliated power generation company shall file a final fuel reconciliation for the period ending the day before the date customer choice is introduced. The final fuel balance from that reconciliation shall be included in the true-up proceeding under Section 39.262.

(d) An affiliated retail electric provider shall make public its price to beat in a manner that provides adequate disclosure as determined by the commission.

(e) The affiliated retail electric provider may not charge rates for residential or small commercial customers that are different from the price to beat until the earlier of 36 months after the date customer choice is introduced or:

(1) for service to residential customers, the date the commission determines that 40 percent or more of the electric power consumed by residential customers within

the affiliated transmission and distribution utility's certificated service area before the onset of customer choice is committed to be served by nonaffiliated retail electric providers; or

(2) for service to small commercial customers, the date the commission determines that 40 percent or more of the electric power consumed by small commercial customers within the affiliated transmission and distribution utility's certificated service area before the onset of customer choice is committed to be served by nonaffiliated retail electric providers.

(f) Notwithstanding Subsection (e), the affiliated retail electric provider may charge rates that are different from the price to beat for service to aggregated loads of nonresidential customers having an aggregated peak demand greater than 1,000 kilowatts, provided that all affected customers are:

(1) commonly owned; or

(2) franchisees of the same franchisor.

(g) The affiliated retail electric provider may not encourage or provide an incentive to a customer to switch to a nonaffiliated retail electric provider, promote any nonaffiliated retail electric provider, or exchange customers with any nonaffiliated retail electric provider to comply with the requirements of Subsection (e)(1) or (2).

(h) The following standards shall be used for measuring electric power consumption during the period before the onset of customer choice:

(1) the consumption of residential and small commercial customers with an annual peak demand less than or equal to 20 kilowatts shall be based on the average annual consumption of those respective groups during the year 2000;

(2) consumption for all small commercial customers with an annual peak demand larger than 20 kilowatts shall be based on each customer's usage during the year 2000; and

(3) for purposes of determining whether an affiliated retail electric provider has met the requirements of Subsection (e)(2), the aggregated loads of nonresidential customers having a peak demand greater than 1,000 kilowatts that are served by the affiliated retail electric provider at a rate different from the price to beat under Subsection (f) shall be deducted from the electric power consumption of small commercial customers during the period before the onset of customer choice.

(i) For purposes of Subsection (h)(2), if less than 12 months of consumption history exists for any such customer, the usage history shall be supplemented with the prior history of that customer's location. For service to a new location, the annual consumption shall be determined as the transmission and distribution utility's estimate of the maximum annual kilowatt demand used in sizing the electric service to that customer multiplied by 8,760 hours, and that product multiplied by the average annual customer load factor for small commercial customers with loads greater than 20 kilowatts for the year 2000.

(j) On determining that its affiliated retail electric provider has met the requirements of Subsection (e)(1) or (2), an electric utility or a transmission and distribution utility shall make a filing with the commission attesting to the fact that those requirements have been met and that the restrictions of Subsection (e)(1) or (2) and the true-up in Section 39.262(e) are no longer applicable. The commission shall adopt appropriate procedures to enable it to accept or reject the filing within 30 days.

(k) Following the true-up proceedings conducted under Section 39.262, the commission may adjust the price to beat.

(l) An affiliated retail electric provider may request that the commission adjust the fuel factor established under Subsection (b) not more than twice a year if the affiliated retail electric provider demonstrates that the existing fuel factor does not adequately reflect significant changes in the market price of natural gas and purchased energy used to serve retail customers.

(m) In a power region outside of ERCOT, if customer choice is introduced before the requirements of Section 39.152(a) are met, an affiliated retail electric provider shall charge rates to customers other than residential and small commercial customers that are no higher than the rates that, on a bundled basis, were in effect on January 1, 1999, adjusted to reflect the fuel factor as provided by Subsection (b) and adjusted for any base rate reduction as stipulated to by an electric utility in a proceeding for which a final order had not been issued by January 1, 1999.

(n) Notwithstanding Subsection (a), in a power region outside of ERCOT, if customer choice is introduced before the requirements of Section 39.152(a) are met, an affiliated retail electric provider shall continue to offer the price to beat to residential and small commercial customers, unless the price is changed by the commission in accordance with this chapter, until the later of 60 months after the date customer choice is introduced or the requirements of Section 39.152(a) are met.

(o) In this section, "small commercial customer" means a commercial customer having a peak demand of 1,000 kilowatts or less.

(p) On finding that a retail electric provider will be unable to maintain its financial integrity if it complies with Subsection (a), the commission shall set the retail electric provider's price to beat at the minimum level that will allow the retail electric provider to maintain its financial integrity. However, in no event shall the price to beat exceed the level of rates, on a bundled basis, charged by the affiliated electric utility on September 1, 1999, adjusted for fuel as provided by Subsection (b).

Sec. 39.203. TRANSMISSION AND DISTRIBUTION SERVICE. (a) All transmission and distribution utilities shall provide transmission service at wholesale under Subchapter A, Chapter 35. In addition, on and after January 1, 2002, a transmission and distribution utility shall provide transmission or distribution service, or both, at retail to an electric utility, a retail electric provider, a municipally owned utility, an electric cooperative, or an end-use customer at rates, terms of access, and conditions that are comparable to those that apply to the transmission and distribution utility and its affiliates. A municipally owned utility offering customer choice or an electric cooperative offering customer choice shall likewise provide transmission or distribution service, or both, at retail to all such entities in accordance with the commission's rules applicable to terms and conditions of access and at rates adopted in accordance with Sections 40.055(a)(1) and 41.055(1), respectively.

(b) When necessary to serve a wholesale customer an electric utility, an electric cooperative that has not opted for customer choice, or a municipally owned utility that has not opted for customer choice shall provide wholesale transmission service at distribution voltage. A customer of a municipally owned utility that has not opted for customer choice or of an electric cooperative that has not opted for customer choice may not claim the status of a wholesale customer or be designated as a wholesale customer if the customer is being or has been served under a retail rate schedule of the municipally owned utility or electric cooperative.

(c) On or before January 1, 2002, the commission shall establish for all retail electric utilities offering customer choice reasonable and comparable terms and

conditions, in accordance with Section 39.201, that comply with Subsection (a) for open access on distribution facilities and shall establish, for all retail electric utilities offering customer choice other than municipally owned utilities and electric cooperatives, reasonable and comparable rates for open access on distribution facilities.

(d) The terms of access, conditions, and rates established under Subsection (c) shall be comparable to the terms of access, conditions, and rates that the electric utility applies to itself or its affiliates. The rules shall also provide that all ancillary services provided by the utility to itself or its affiliates are also available to third parties on request on a nondiscriminatory basis.

(e) The commission may require an electric utility or a transmission and distribution utility to construct or enlarge facilities to ensure safe and reliable service for the state's electric markets. In any proceeding brought under Chapter 37, an electric utility or transmission and distribution utility ordered to construct or enlarge facilities under this subchapter need not prove that the construction ordered is necessary for the service, accommodation, convenience, or safety of the public and need not address the factors listed in Sections 37.056(c)(1)-(3) and (4)(E).

(f) The commission's rules must be consistent with the standards of this title and may not be contrary to an applicable decision, rule, or policy statement of a federal regulatory agency having jurisdiction.

(g) Each power region shall have generally applicable tariffs approved by the commission or a federal regulatory agency having jurisdiction that guarantees open and nondiscriminatory access as required by Section 39.152. This subsection may not be deemed to vest in the commission power to set or approve distribution access rates of a municipally owned utility or an electric cooperative that has adopted customer choice.

Sec. 39.204. TARIFFS FOR OPEN ACCESS. Each transmission and distribution utility shall file a tariff implementing the open access rules with the commission or the federal regulatory authority having jurisdiction over the transmission and distribution service of the utility not later than the 90th day before the date customer choice is offered by that utility.

Sec. 39.205. REGULATION OF COSTS FOLLOWING FREEZE PERIOD. At the conclusion of the freeze period, any remaining costs associated with nuclear decommissioning obligations continue to be subject to cost of service rate regulation and shall be included as a nonbypassable charge to retail customers.

[Sections 39.206-39.250 reserved for expansion]

SUBCHAPTER F. RECOVERY OF STRANDED COSTS THROUGH COMPETITION TRANSITION CHARGE

Sec. 39.251. DEFINITIONS. In this subchapter:

(1) "Above market purchased power costs" means wholesale demand and energy costs that a utility is obligated to pay under an existing purchased power contract to the extent the costs are greater than the purchased power market value.

(2) "Existing purchased power contract" means a purchased power contract in effect on January 1, 1999, including any amendments and revisions to that contract resulting from litigation initiated before January 1, 1999.

(3) "Generation assets" means all assets associated with the production of electricity, including generation plants, electrical interconnections of the generation plant to the transmission system, fuel contracts, fuel transportation contracts, water

contracts, lands, surface or subsurface water rights, emissions-related allowances, and gas pipeline interconnections.

(4) "Market value" means, for nonnuclear assets and certain nuclear assets, the value the assets would have if bought and sold in a bona fide third-party transaction or transactions on the open market under Section 39.262(h) or, for certain nuclear assets, as described by Section 39.262(i), the value determined under the method provided by that subsection.

(5) "Purchased power market value" means the value of demand and energy bought and sold in a bona fide third-party transaction or transactions on the open market and determined by using the weighted average costs of the highest three offers from the market for purchase of the demand and energy available under the existing purchased power contracts.

(6) "Retail stranded costs" means that part of net stranded cost associated with the provision of retail service.

(7) "Stranded cost" means the positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards No. 71 ("Accounting for the Effects of Certain Types of Regulation") for generation-related assets if required by the provisions of this chapter. For purposes of Section 39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under Section 39.262(h), whichever is earlier, and shall include stranded costs incurred under Section 39.263.

Sec. 39.252. RIGHT TO RECOVER STRANDED COSTS. (a) An electric utility is allowed to recover all of its net, verifiable, nonmitigable stranded costs incurred in purchasing power and providing electric generation service.

(b) Recovery of retail stranded costs by an electric utility shall be from all existing or future retail customers, including the facilities, premises, and loads of those retail customers, within the utility's geographical certificated service area as it existed on May 1, 1999.

(c) In multiply certificated areas, a retail customer may not avoid stranded cost recovery charges by switching to another electric utility, electric cooperative, or municipally owned utility after May 1, 1999. A customer in a multiply certificated service area that requested to switch providers on or before May 1, 1999, or was not taking service from an electric utility on May 1, 1999, and does not do so after that date is not responsible for paying retail stranded costs of that utility.

(d) An electric utility shall pursue commercially reasonable means to reduce its potential stranded costs, including good faith attempts to renegotiate above-cost fuel and purchased power contracts or the exercise of normal business practices to protect the value of its assets. The commission shall consider the utility's efforts under this subsection when determining the amount of the utility's stranded costs, provided, however, that nothing in this section authorizes the commission to substitute its judgment for a market valuation of generation assets determined under Sections 39.262(h) and (i).

Sec. 39.253. ALLOCATION OF STRANDED COSTS. (a) In allocating retail stranded costs among retail customer classes, the commission shall determine a cost allocation methodology that incorporates the following factors:

(1) the type of generation plant for which the stranded costs exist;

(2) the load that the plant serves; and

(3) the average demand of each customer class throughout the year for the output of the plant.

(b) Retail stranded costs not directly related to a generation plant shall be allocated to retail customer classes based on the kilowatt hour usage of each class.

(c) Except as provided by Section 39.262(k), no customer or customer class may avoid the obligation to pay the amount of stranded costs allocated to that customer or class.

Sec. 39.254. USE OF REVENUES FOR UTILITIES WITH STRANDED COSTS. This subchapter provides a number of tools to an electric utility to mitigate stranded costs. Each electric utility that was reported by the commission to have positive "excess costs over market" (ECOM), denoted as the "base case" for the amount of stranded costs before full retail competition in 2001 with respect to its Texas jurisdiction, in the April 1998 Report to the Texas Senate Interim Committee on Electric Utility Restructuring entitled "Potentially Strandable Investment (ECOM) Report: 1998 Update," must use these tools to reduce the net book value of, otherwise referred to as "accelerate" the cost recovery of, its stranded costs each year. Any positive difference under the report required by Section 39.257(b) shall be applied to the net book value of generation assets.

Sec. 39.255. USE OF REVENUES FOR UTILITIES WITH NO STRANDED COSTS. (a) An electric utility that does not have stranded costs described by Section 39.254 shall be permitted to use any positive difference under the report required by Section 39.257(b) on capital expenditures to improve or expand transmission or distribution facilities, or on capital expenditures to improve air quality, as approved by the commission. Any such capital expenditures shall be made in the calendar year immediately following the year for which the report required by Section 39.257 is calculated. The capital expenditures shall be reflected in any future proceeding under this chapter to set transmission or distribution rates as a reduction to the utility's transmission and distribution invested capital, as approved by the commission.

(b) To the extent that positive differences under the report required by Section 39.257(b) are not used for capital expenditures, the amounts shall be flowed back to the electric utility's Texas jurisdictional customers through the power cost recovery factor.

(c) This section applies only to the use of positive differences under the report required by Section 39.257(b) for each year during the freeze period.

Sec. 39.256. OPTION TO REDIRECT DEPRECIATION. (a) For the calendar years of 1998, 1999, 2000, and 2001, an electric utility described by Section 39.254 may redirect all or a part of the depreciation expense relating to transmission and distribution assets to its net generation plant assets.

(b) The electric utility shall report a decision under Subsection (a) to the commission and any other applicable regulatory authority.

(c) Any adjustments made to the book value of transmission and distribution assets or the creation of any related regulatory assets resulting from the redirection under this section shall be accepted and applied by the commission for establishing net invested capital and transmission and distribution rates for retail customers in all future proceedings.

(d) Notwithstanding Subsection (c), the design of post-freeze-period retail rates may not:

(1) shift the allocation of responsibility for stranded costs;

(2) include the adjusted costs in wholesale transmission and distribution rates; or

(3) apply the adjustments for the purpose of establishing net invested capital and transmission and distribution rates for wholesale customers.

Sec. 39.257. ANNUAL REPORT. (a) Beginning with the 1999 calendar year, each electric utility shall file a report with the commission not later than 90 days after the end of each year during the freeze period under a schedule and a format determined by the commission.

(b) The report shall identify any positive difference between annual revenues, reduced by the amount of annual revenues under Sections 36.203 and 36.205, the revenues received under the interutility billing process as adopted by the commission to implement Sections 35.004, 35.006, and 35.007, revenues associated with transition charges as defined by Section 39.302, and annual costs.

Sec. 39.258. ANNUAL REPORT: DETERMINATION OF ANNUAL COSTS. For the purposes of determining the annual costs in each annual report, the following amounts shall be used:

(1) the lesser of:

(A) the utility's Texas jurisdictional operation and maintenance expense reflected in each utility's Federal Energy Regulatory Commission Form 1 of the report year, plus factoring expenses not included in operation and maintenance, adjusted for:

(i) costs under Sections 36.062, 36.203, and 36.205; and

(ii) revenues recorded under the interutility billing process adopted by the commission to implement Sections 35.004, 35.006, and 35.007; or

(B) the Texas jurisdictional operation and maintenance expense reflected in each utility's 1996 Federal Energy Regulatory Commission Form 1, plus factoring expenses not included in operation and maintenance, adjusted for:

(i) costs under Sections 36.062, 36.203, and 36.205, and not indexed for inflation;

(ii) any difference between the annual revenues and the expenses recorded under the interutility billing process adopted by the commission to implement Sections 35.004, 35.006, and 35.007; and

(iii) the annual percentage change in the average number of utility customers;

(2) the amount of nuclear decommissioning expense approved in the electric utility's last rate proceeding before the commission, as may be required to be adjusted to comply with applicable federal regulatory requirements;

(3) the depreciation rates approved in the electric utility's last rate proceeding before the commission;

(4) the amortization expense approved in the electric utility's last rate proceeding before the commission or in any other proceeding in which deferred costs and the amortization of those costs are established, except that if the items are fully amortized during the freeze period, the expense shall be adjusted accordingly;

(5) taxes and fees, including municipal franchise fees to the extent not included in Subdivision (1), other than federal income taxes, and assessments incurred that year;

(6) federal income tax expense, computed according to the stand-alone methodology and using the actual capital structure and actual cost of debt as of December 31 of the report year;

(7) return on invested capital, computed by multiplying invested capital as of December 31 of the report year, determined as provided by Section 39.259, by the cost of capital approved in the electric utility's most recent rate proceeding before the commission in which the cost of capital was specifically adopted, or, in the case of a range, the midpoint of the range, if the final rate order for the proceeding was issued on or after January 1, 1992, or if such an order does not exist, a cost of capital of 9.6 percent shall be used; and

(8) the amount resulting from any operation and maintenance expense savings tracker from a merger of two utilities and contained in a settlement agreement approved by the commission before January 1, 1999.

Sec. 39.259. ANNUAL REPORT: DETERMINATION OF INVESTED CAPITAL. (a) For the purposes of determining invested capital in each annual report, the net plant in service, regulatory assets, and deferred federal income taxes shall be updated each year, and generation-related invested capital shall be reduced by the amount of securitization under Sections 39.201(i) and 39.262(c) to the extent otherwise included in invested capital.

(b) Capital additions to a plant in an amount less than 1-1/2 percent of the electric utility's net plant in service on December 31, 1998, less plant items previously excluded by the commission, for each of the years 1999 through 2001 are presumed prudent.

(c) All other items in invested capital shall be as approved in the electric utility's last rate proceeding before the commission.

Sec. 39.260. USE OF GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. (a) The definition and identification of invested capital and other terms used in this subchapter and Subchapter G that affect the net book value of generation assets and the treatment of transactions performed under Section 35.035 and other transactions authorized by this title or approved by the regulatory authority that affect the net book value of generation assets during the freeze period shall be treated in accordance with generally accepted accounting principles as modified by regulatory accounting rules generally applicable to utilities.

(b) The principles and criteria described by Subsection (a), including the criteria for applicability of Statement of Financial Accounting Standards No. 71 ("Accounting for the Effects of Certain Types of Regulation"), shall be applied for purposes of this subchapter as they existed on January 1, 1999.

Sec. 39.261. REVIEW OF ANNUAL REPORT. (a) The annual report filed under this subchapter is a public document and shall be reviewed by the staff of the commission and the office. Both staffs may review work papers and supporting documents and engage in discussions with the utility about the data underlying the reports.

(b) The staff of the commission and the office shall communicate in writing to an electric utility not later than the 180th day after the date the report is filed if they have any disagreements with the data or computations.

(c) The commission shall finalize and resolve any disagreements related to the annual report, consistent with the requirements of Section 39.258, as follows:

(1) for each calendar year, the commission shall finalize the annual report before establishing the competition transition charge under Section 39.201; and

(2) for each calendar year, the commission shall finalize the annual report and reflect the result as part of the true-up proceeding under Section 39.262.

Sec. 39.262. TRUE-UP PROCEEDING. (a) An electric utility, together with its affiliated retail electric provider and its affiliated transmission and distribution utility, may not be permitted to overrecover stranded costs through the procedures established by this section or through the application of the measures provided by the other sections of this chapter.

(b) After the freeze period, an electric utility located in a power region that is not certified under Section 39.152 shall continue to file annual reports under Sections 39.257, 39.258, and 39.259 as if the freeze period remained in effect, until the time the power region qualifies as certified under Section 39.152. In addition, the commission staff and the office shall continue to review the annual reports as provided by Section 39.261.

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

(d) The affiliated power generation company shall reconcile, and either credit or bill to the transmission and distribution utility, the net sum of:

(1) the former electric utility's final fuel balance determined under Section 39.202(c); and

(2) any difference between the price of power obtained through the capacity auctions under Sections 39.153 and 39.156 and the power cost projections that were employed for the same time period in the ECOM model to estimate stranded costs in the proceeding under Section 39.201.

(e) To the extent that the price to beat exceeded the market price of electricity, the affiliated retail electric provider shall reconcile and credit to the affiliated transmission and distribution utility any positive difference between the price to beat established under Section 39.202, reduced by the nonbypassable delivery charge established under Section 39.201, and the prevailing market price of electricity during the same time period. A reconciliation for the applicable customer class is not required under this subsection for an affiliated retail electric provider that satisfies the requirements of Section 39.202(e)(1) or (2) before the expiration of two years from the introduction of customer choice. If a reconciliation is required, in no event shall the amount credited exceed an amount equal to the number of residential or small commercial customers served by the affiliated transmission and distribution utility that are buying electricity from the affiliated retail electric provider at the price to beat on the second anniversary of the beginning of competition, minus the number of new customers obtained outside the service area, multiplied by $150.

(f) To the extent that any amount of regulatory assets included in a securitization charge or competitive transition charge exceeds the amount of regulatory assets approved in a rate order which became effective on or before September 1, 1999, the commission shall conduct a review during the true-up proceeding to determine

whether such amounts were appropriately calculated and constituted reasonable and necessary costs pursuant to Subchapter B, Chapter 36. If the commission finds that the amount of regulatory assets specified in Section 39.302(5) is subject to modification, a credit or other rate adjustment shall be made to the transmission and distribution utility's non-bypassable delivery rates; provided, however, that no adjustment may be made to a transition charge established under Subchapter G.

(g) Based on the credits or bills received from its affiliates under Subsections (d), (e), and (f), the transmission and distribution utility shall make necessary adjustments to the nonbypassable delivery rates it charges to retail electric providers. If the commission determines that the nonbypassable delivery rates are not sufficient, the commission may extend the original collection period for the charge or, if necessary, increase the charge. Alternatively, if the commission determines that the nonbypassable delivery rates are larger than are needed to recover the transmission and distribution utility's costs, the commission shall correspondingly reduce:

(1) the competition transition charge, to the extent it has not been securitized;

(2) the depreciation expense that has been redirected under Section 39.256;

(3) the transmission and distribution utility's rates; or

(4) a combination of the elements in Subdivisions (1)-(3).

(h) Except as provided in Subsection (i), for the purpose of finalizing the stranded cost estimate used to establish the competition transition charge under Section 39.201, the affiliated power generation company shall quantify its stranded costs using one or more of the following methods:

(1) Sale of Assets. If, at any time after December 31, 1999, an electric utility or its affiliated power generation company has sold some or all of its generation assets, which sale shall include all generating assets associated with each generating plant that is sold, in a bona fide third-party transaction under a competitive offering, the total net value realized from the sale establishes the market value of the generation assets sold. If not all assets are sold, the market value of the remaining generation assets shall be established by one or more of the other methods in this section.

(2) Stock Valuation Method. If, at any time after December 31, 1999, an electric utility or its affiliated power generation company has transferred some or all of its generation assets, including, at the election of the electric utility or power generation company, any fuel and fuel transportation contracts related to those assets, to one or more separate affiliated or nonaffiliated corporations, not less than 51 percent of the common stock of each corporation is spun off and sold to public investors through a national stock exchange, and the common stock has been traded for not less than one year, the resulting average daily closing price of the common stock over 30 consecutive trading days chosen by the commission out of the last 120 consecutive trading days before the filing required under Subsection (c) establishes the market value of the common stock equity in each transferee corporation. The book value of each transferee corporation's debt and preferred stock securities shall be added to the market value of its assets. The market value of each transferee corporation's assets shall be reduced by the corresponding net book value of the assets acquired by each transferee corporation from any entity other than the affiliated electric utility or power generation company. The resulting market value of the assets establishes the market value of the generation assets transferred by the electric utility or power generation company to each separate corporation. If not all assets are disposed of in this manner, the market value of the remaining assets shall be established by one or more of the other methods in this section.

(3) Partial Stock Valuation Method. If, at any time after December 31, 1999, an electric utility or its affiliated power generation company has transferred some or all of its generation assets, including, at the election of the electric utility or power generation company, any fuel and fuel transportation contracts related to those assets, to one or more separate affiliated or nonaffiliated corporations, at least 19 percent, but less than 51 percent, of the common stock of each corporation is spun off and sold to public investors through a national stock exchange, and the common stock has been traded for not less than one year, the resulting average daily closing price of the common stock over 30 consecutive trading days chosen by the commission out of the last 120 consecutive trading days before the filing required under Subsection (c) shall be presumed to establish the market value of the common stock equity in each transferee corporation. The commission may accept the market valuation to conclusively establish the value of the common stock equity in each transferee corporation or convene a valuation panel of three independent financial experts to determine whether the percentage of common stock sold is fairly representative of the total common stock equity or whether a control premium exists for the retained interest. The valuation panel must consist of financial experts, chosen from proposals submitted in response to commission requests, from the top 10 nationally recognized investment banks with demonstrated experience in the United States electric industry as indicated by the dollar amount of public offerings of long-term debt and equity of United States investor-owned electric companies over the immediately preceding three years as ranked by the publications "Securities Data" or "Institutional Investor." If the panel determines that a control premium exists for the retained interest, the panel shall determine the amount of the control premium, and the commission shall adopt the determination but may not increase the market value by a control premium greater than 10 percent. The costs and expenses of the panel, as approved by the commission, shall be paid by each transferee corporation. The determination of the commission based on the finding of the panel conclusively establishes the value of the common stock of each transferee corporation. The book value of each transferee corporation's debt and preferred stock securities shall be added to the market value of its assets. The market value of each transferee corporation's assets shall be reduced by the corresponding net book value of the assets acquired by each transferee corporation from any entity other than the affiliated electric utility or power generation company. The resulting market value of the assets establishes the market value of the generation assets transferred by the electric utility or power generation company to each separate corporation.

(4) Exchange of Assets. If, at any time after December 31, 1999, an electric utility or its affiliated power generation company has transferred some or all of its generation assets, including any fuel and fuel transportation contracts related to those assets, in a bona fide third-party exchange transaction, the stranded costs related to the transferred assets shall be the difference between the book value and the market value of the transferred assets at the time of the exchange, taking into account any other consideration received or given. The market value of the transferred assets may be determined through an appraisal by a nationally recognized independent appraisal firm, if the market value is subject to a market valuation by means of an offer of sale in accordance with this subdivision. To obtain a market valuation by means of an offer of sale, the owner of the asset shall offer it for sale to other parties under procedures that provide broad public notice of the offer and a reasonable opportunity for other parties to bid on the asset. The owner of the asset may establish a reserve price for any

offer based on the sum of the appraised value of the asset and the tax impact of selling the asset, as determined by the commission.

(i) Unless an electric utility or its affiliated power generation company combines all of its remaining generation assets into one or more transferee corporations as described in Subsections (g)(2) and (3), the electric utility shall quantify its stranded costs for nuclear assets using the ECOM method. The ECOM method is the estimation model prepared for and described by the commission's April 1998 Report to the Texas Senate Interim Committee on Electric Restructuring entitled "Potentially Strandable Investment (ECOM) Report: 1998 Update." The methodology used in the model must be the same as that used in the 1998 report to determine the "base case." At the time of the proceeding under this section, the ECOM model shall be rerun using updated company-specific inputs required by the model, updating the market price of electricity, and using updated natural gas price forecasts and the capacity cost based on the long-run marginal cost of the most economic new generation technology then available. Natural gas price projections used in the model must be market-based natural gas forward prices, where available. Growth rates in generating plant operations and maintenance costs and allocated administrative and general costs shall be benchmarked by comparing those costs to the best available information on cost trends for comparable generating plants. Capital additions shall be benchmarked using the limitation in Section 39.259(b).

(j) The commission shall issue a final order not later than the 150th day after the date of the filing under this section by the transmission and distribution utility, its affiliated retail electric provider, and its affiliated power generation company, and the resulting order shall be subject to judicial review under Chapter 2001, Government Code.

(k) Notwithstanding Section 39.252, to the extent that a customer's actual load has been lawfully served by a fully operational qualifying facility before September 1, 2001, or by an on-site power production facility with a rated capacity of 10 megawatts or less, any charge for recovery of stranded costs under this section or Subchapter G assessed on that customer after the facility becomes fully operational shall be included only in those tariffs or charges associated with the services actually provided by the transmission and distribution utility, if any, to the customer after the facility became fully operational and may not include any costs associated with the service provided to the customer by the electric utility or its affiliated transmission and distribution utility under their tariffs before the operation of that qualifying facility. To qualify under this subsection, a qualifying facility must have made substantially complete filings on or before December 31, 1999, for all necessary site-specific environmental permits under the rules of the Texas Natural Resource Conservation Commission in effect at the time of filing.

Sec. 39.263. STRANDED COST RECOVERY OF ENVIRONMENTAL CLEANUP COSTS. (a) Subject to Subsection (c), capital costs incurred by an electric utility to improve air quality before January 1, 2002, are eligible for inclusion as net invested capital under Section 39.259, notwithstanding the limitations imposed under Sections 39.259(b) and (c).

(b) Subject to Subsection (c), capital costs incurred by an electric utility or an affiliated power generation company to improve air quality after January 1, 2002, and before May 1, 2003, are eligible for inclusion in the determination of invested capital in the true-up proceeding under Section 39.262.

(c) Reasonable costs incurred under Subsections (a) and (b) shall be included as invested capital and considered in an electric utility's stranded cost determination only to the extent that:

(1) the cost is applied to offset or reduce the emission of airborne contaminants from an electric generating facility, where:

(A) the reduction or offset is determined by the Texas Natural Resource Conservation Commission to be an essential component in achieving compliance with a national ambient air quality standard; or

(B) the reduction or offset is necessary in order for an unpermitted electric generating facility to obtain a permit in the manner provided by Section 39.264;

(2) the retrofit decision is determined to be the most cost-effective after consideration of alternative measures, including the retirement of the generating facility; and

(3) the amount and location of resulting emission reductions is consistent with the air quality goals and policies of the Texas Natural Resource Conservation Commission.

(d) If the retirement of a generating facility is the most cost-effective alternative, taking into account the cost of replacement generating capacity, the net book value, including retirement costs and offsetting salvage value, of the affected facility shall be included in the electric utility's stranded cost determination, notwithstanding Section 39.259(c).

Sec. 39.264. EMISSIONS REDUCTIONS OF "GRANDFATHERED FACILITIES." (a) In this section:

(1) "Conservation commission" means the Texas Natural Resource Conservation Commission.

(2) "Electric generating facility" means a facility that generates electric energy for compensation and is owned or operated by a person in this state, including a municipal corporation, electric cooperative, or river authority.

(b) This section applies only to an electric generating facility existing on January 1, 1999, that is not subject to the requirement to obtain a permit under Section 382.0518(g), Health and Safety Code.

(c) It is the intent of the legislature that, for the 12-month period beginning on May 1, 2003, and for each 12-month period after the end of that period, total annual emissions of nitrogen oxides from facilities subject to this section may not exceed levels equal to 50 percent of the total emissions of that pollutant during 1997, as reported to the conservation commission, and total annual emissions of sulphur dioxides from coal-fired facilities subject to this section may not exceed levels equal to 75 percent of the total emissions of that pollutant during 1997, as reported to the conservation commission. The limitations prescribed by this subsection may be met through an emissions allocation and allowance transfer system described by this section.

(d) A municipal corporation, electric cooperative, or river authority may exclude any electric generating facilities of 25 megawatts or less from the requirements prescribed by this section. Not later than January 1, 2000, a municipal corporation, electric cooperative, or river authority must inform the conservation commission of its intent to exclude those facilities.

(e) The owner or operator of an electric generating facility shall apply to the conservation commission for a permit for the emission of air contaminants on or before

September 1, 2000. A permit issued by the conservation commission under this section shall require the facility to achieve emissions reductions or trading emissions allowances as provided by this section. If the facility uses coal as a fuel, the permit must also be conditioned on the facility's emissions meeting opacity limitations provided by conservation commission rules. Notwithstanding Section 382.0518(g), Health and Safety Code, a facility that does not obtain a permit as required by this subsection may not operate after May 1, 2003, unless the conservation commission finds good cause for an extension.

(f) The conservation commission shall develop rules for the permitting of electric generating facilities. The rules adopted under this subsection shall provide, by region, for the allocation of emissions allowances of sulphur dioxides and nitrogen oxides among electric generating facilities and for facilities to trade emissions allowances for those contaminants.

(g) The conservation commission by rule shall establish an East Texas Region, a West Texas Region, and an El Paso Region for allocation of air contaminants under the permitting program under Subsection (f). The East Texas Region must contain all counties traversed by or east of Interstate Highway 35 or Interstate Highway 37, including Bosque, Coryell, Hood, Parker, Somervell, and Wise counties. The West Texas Region includes all of the state not contained in the East Texas Region or the El Paso Region. The El Paso Region includes El Paso County.

(h) Not later than January 1, 2000, the conservation commission shall allocate to each electric generating facility in each region a number of annual emissions allowances, with each allowance equal to one ton of sulphur dioxides or of nitrogen oxides emitted in a year, that permit emissions of the contaminants from the facility in that year. The conservation commission must allocate to each facility a number of emissions allowances equal to an emissions rate measured in pounds per million British thermal units divided by 2,000 and multiplied by the facility's total heat input in terms of million British thermal units during 1997. For the East Texas Region, the emissions rate shall be 0.14 pounds per million British thermal units for nitrogen oxides and 1.38 pounds per million British thermal units for sulphur dioxides. For the West Texas and El Paso regions, the emissions rate shall be 0.195 pounds per million British thermal units for nitrogen oxides. Allowances for sulphur dioxides may only be allocated among coal-fired facilities.

(i) A person, municipal corporation, electric cooperative, or river authority that owns and operates an electric generating facility not covered by this section may elect to designate that facility to become subject to the requirements of this section and to receive emissions allowances for the purpose of complying with the emissions limitations prescribed by Subsection (c). The conservation commission shall adopt rules governing this election that:

(1) require an owner or operator of an electric generation facility to designate to the conservation commission in its permit application under Subsection (e) any facilities that will become subject to this section;

(2) require the conservation commission, notwithstanding the allocation mechanism provided by Subsection (h), to allocate additional allowances to facilities governed by this subsection in an amount equal to each facility's actual emissions in tons in 1997;

(3) provide that any unit designated under this subsection may not transfer or bank allowances conserved as a result of reduced utilization or shutdown, except that

the allowances may be transferred or carried forward for use in subsequent years to the extent that the reduced utilization or shutdown results from the replacement of thermal energy from the unit designated under this subsection with thermal energy generated by any other unit; and

(4) provide that emissions reductions from electing facilities designated in this subsection may only be used to satisfy the emissions reductions for grandfathered facilities defined in Subsection (c) to the extent that reductions used to satisfy the limitations in Subsection (c) are beyond the requirements of any other state or federal standard, or both.

(j) The conservation commission by rule shall permit a facility to trade emissions allocations with other electric generating facilities only in the same region.

(k) The conservation commission by rule shall provide methods for the conservation commission to determine whether a facility complies with the permit issued under this section. The rules must provide for:

(1) monitoring and reporting actual emissions of sulphur dioxides and nitrogen oxides from each facility;

(2) provisions for saving unused allowances for use in later years; and

(3) a system for tracking traded allowances.

(l) A facility may not trade an unused allowance for a contaminant for use as a credit for another contaminant.

(m) A person possessing market power shall not withhold emissions allowances from the market in a manner that is unreasonably discriminatory or tends to unreasonably restrict, impair, or reduce the level of competition.

(n) The conservation commission shall penalize a facility that emits an air contaminant that exceeds the facility's allowances for that contaminant by:

(1) enforcing an administrative penalty, in an amount determined by conservation commission rules, for each ton of air contaminant emissions by which the facility exceeds its allocated emissions allowances; and

(2) reducing the facility's emissions allowances for the next year by an amount of emissions equal to the excessive emissions in the year the facility emitted the excessive air contaminants.

(o) The conservation commission may penalize a facility that emits an air contaminant that exceeds the facility's allowances for that contaminant by:

(1) ordering the facility to cease operations; or

(2) taking other enforcement action provided by conservation commission rules.

(p) The conservation commission by rule shall provide for a facility in the El Paso Region to meet emissions allowances by using credits from emissions reductions achieved in Ciudad Juarez, United Mexican States.

(q) If the conservation commission or the United States Environmental Protection Agency determines that reductions in nitrogen oxides emissions in the El Paso Region otherwise required by this section would result in increased ambient ozone levels in El Paso County, facilities in the El Paso Region are exempt from the nitrogen oxides reduction requirements.

(r) An applicant for a permit under Subsection (e) shall publish notice of intent to obtain the permit in accordance with Section 382.056, Health and Safety Code. The conservation commission shall provide an opportunity for a public hearing and the submission of public comment and send notice of a decision on an application for a

permit under Subsection (e) in the same manner as provided by Sections 382.0561 and 382.0562, Health and Safety Code. The conservation commission shall review and renew a permit issued under this section in accordance with Section 382.055, Health and Safety Code.

(s) This section does not limit the authority of the conservation commission to require further reductions of nitrogen oxides, sulphur dioxides, or any other pollutant from generating facilities subject to this section or Section 39.263.

Sec. 39.265. RIGHTS NOT AFFECTED. This chapter is not intended to alter any rights of utilities to recover stranded costs from wholesale customers.

[Sections 39.266-39.300 reserved for expansion]

SUBCHAPTER G. SECURITIZATION

Sec. 39.301. PURPOSE. The purpose of this subchapter is to enable utilities to use securitization financing to recover regulatory assets and stranded costs, because this type of debt will lower the carrying costs of the assets relative to the costs that would be incurred using conventional utility financing methods. The savings associated with securitization shall work to the benefit of ratepayers. The amount securitized may not exceed the present value of the revenue requirement over the life of the proposed transition bond associated with the regulatory assets or stranded costs sought to be securitized. The present value calculation shall use a discount rate equal to the proposed interest rate on the transition bonds.

Sec. 39.302. DEFINITIONS. In this subchapter:

(1) "Assignee" means any individual, corporation, or other legally recognized entity to which an interest in transition property is transferred, other than as security, including any assignee of that party.

(2) "Financing order" means an order of the commission adopted under Section 39.201 or 39.262 approving the issuance of transition bonds and the creation of transition charges for the recovery of qualified costs.

(3) "Financing party" means a holder of transition bonds, including trustees, collateral agents, and other persons acting for the benefit of the holder.

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

(5) "Regulatory assets" means the generation-related portion of the Texas jurisdictional portion of the amount reported by the electric utility in its 1998 annual report on Securities and Exchange Commission Form 10-K as regulatory assets and liabilities, offset by the applicable portion of generation-related investment tax credits permitted under the Internal Revenue Code of 1986.

(6) "Transition bonds" means bonds, debentures, notes, certificates of participation or of beneficial interest, or other evidences of indebtedness or ownership that are issued by an electric utility, its successors, or an assignee under a financing order, that have a term not longer than 15 years, and that are secured by or payable from transition property. If certificates of participation, beneficial interest, or ownership are issued, references in this subchapter to principal, interest, or premium shall refer to comparable amounts under those certificates.

(7) "Transition charges" means nonbypassable amounts to be charged for the use or availability of electric services, approved by the commission under a financing order to recover qualified costs, that shall be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in the financing order.

(8) "Transition property" means the property described in Section 39.304.

Sec. 39.303. FINANCING ORDERS; TERMS. (a) The commission shall adopt a financing order, on application of a utility to recover the utility's regulatory assets and eligible stranded costs under Section 39.201 or 39.262, on making a finding that the total amount of revenues to be collected under the financing order is less than the revenue requirement that would be recovered over the remaining life of the stranded costs using conventional financing methods and that the financing order is consistent with the standards in Section 39.301.

(b) The financing order shall detail the amount of regulatory assets and stranded costs to be recovered and the period over which the nonbypassable transition charges shall be recovered, which period may not exceed 15 years.

(c) Transition charges shall be collected and allocated among customers in the same manner as competition transition charges under Section 39.201.

(d) A financing order shall become effective in accordance with its terms, and the financing order, together with the transition charges authorized in the order, shall thereafter be irrevocable and not subject to reduction, impairment, or adjustment by further action of the commission, except as permitted by Section 39.307.

(e) The commission shall issue a financing order under Subsections (a) and (g) not later than 90 days after the utility files its request for the financing order.

(f) A financing order is not subject to rehearing by the commission. A financing order may be reviewed by appeal only to a Travis County district court by a party to the proceeding filed within 15 days after the financing order is signed by the commission. The judgment of the district court may be reviewed only by direct appeal to the Supreme Court of Texas filed within 15 days after entry of judgment. All appeals shall be heard and determined by the district court and the Supreme Court of Texas as expeditiously as possible with lawful precedence over other matters. Review on appeal shall be based solely on the record before the commission and briefs to the court and shall be limited to whether the financing order conforms to the constitution and laws of this state and the United States and is within the authority of the commission under this chapter.

(g) At the request of an electric utility, the commission may adopt a financing order providing for retiring and refunding transition bonds on making a finding that the future transition charges required to service the new transition bonds, including transaction costs, will be less than the future transition charges required to service the transition bonds being refunded. On the retirement of the refunded transition bonds, the commission shall adjust the related transition charges accordingly.

Sec. 39.304. PROPERTY RIGHTS. (a) The rights and interests of an electric utility or successor under a financing order, including the right to impose, collect, and receive transition charges authorized in the order, shall be only contract rights until they are first transferred to an assignee or pledged in connection with the issuance of transition bonds, at which time they will become "transition property."

(b) Transition property shall constitute a present property right for purposes of contracts concerning the sale or pledge of property, even though the imposition and

collection of transition charges depends on further acts of the utility or others that have not yet occurred. The financing order shall remain in effect and the property shall continue to exist for the same period as the pledge of the state described in Section 39.310.

(c) All revenues and collections resulting from transition charges shall constitute proceeds only of the transition property arising from the financing order.

Sec. 39.305. NO SETOFF. The interest of an assignee or pledgee in transition property and in the revenues and collections arising from that property are not subject to setoff, counterclaim, surcharge, or defense by the electric utility or any other person or in connection with the bankruptcy of the electric utility or any other entity. A financing order shall remain in effect and unabated notwithstanding the bankruptcy of the electric utility, its successors, or assignees.

Sec. 39.306. NO BYPASS. A financing order shall include terms ensuring that the imposition and collection of transition charges authorized in the order shall be nonbypassable.

Sec. 39.307. TRUE-UP. A financing order shall include a mechanism requiring that transition charges be reviewed and adjusted at least annually, within 45 days of the anniversary date of the issuance of the transition bonds, to correct any overcollections or undercollections of the preceding 12 months and to ensure the expected recovery of amounts sufficient to timely provide all payments of debt service and other required amounts and charges in connection with the transition bonds.

Sec. 39.308. TRUE SALE. An agreement by an electric utility or assignee to transfer transition property that expressly states that the transfer is a sale or other absolute transfer signifies that the transaction is a true sale and is not a secured transaction and that title, legal and equitable, has passed to the entity to which the transition property is transferred. This true sale shall apply regardless of whether the purchaser has any recourse against the seller, or any other term of the parties' agreement, including the seller's retention of an equity interest in the transition property, the fact that the electric utility acts as the collector of transition charges relating to the transition property, or the treatment of the transfer as a financing for tax, financial reporting, or other purposes.

Sec. 39.309. SECURITY INTERESTS; ASSIGNMENT; COMMINGLING; DEFAULT. (a) Transition property does not constitute an account or general intangible under Section 9.106, Business & Commerce Code. The creation, granting, perfection, and enforcement of liens and security interests in transition property are governed by this section and not by the Business & Commerce Code.

(b) A valid and enforceable lien and security interest in transition property may be created only by a financing order and the execution and delivery of a security agreement with a financing party in connection with the issuance of transition bonds. The lien and security interest shall attach automatically from the time that value is received for the bonds and, on perfection through the filing of notice with the secretary of state in accordance with the rules prescribed under Subsection (d), shall be a continuously perfected lien and security interest in the transition property and all proceeds of the property, whether accrued or not, shall have priority in the order of filing and take precedence over any subsequent judicial or other lien creditor. If notice is filed within 10 days after value is received for the transition bonds, the security interest shall be perfected retroactive to the date value was received, otherwise, the security interest shall be perfected as of the date of filing.

(c) Transfer of an interest in transition property to an assignee shall be perfected against all third parties, including subsequent judicial or other lien creditors, when the financing order becomes effective, transfer documents have been delivered to the assignee, and a notice of that transfer has been filed in accordance with the rules prescribed under Subsection (d), provided, however, that if notice of the transfer has not been filed in accordance with this subsection within 10 days after the delivery of transfer documentation, the transfer of the interest is not perfected against third parties until the notice is filed.

(d) The secretary of state shall implement this section by establishing and maintaining a separate system of records for the filing of notices under this section and prescribing the rules for those filings based on Chapter 9, Business & Commerce Code, adapted to this subchapter and using the terms defined in this subchapter.

(e) The priority of a lien and security interest perfected under this section is not impaired by any later modification of the financing order under Section 39.307 or by the commingling of funds arising from transition charges with other funds, and any other security interest that may apply to those funds shall be terminated when they are transferred to a segregated account for the assignee or a financing party. If transition property has been transferred to an assignee, any proceeds of that property shall be held in trust for the assignee.

(f) If a default or termination occurs under the transition bonds, the financing parties or their representatives may foreclose on or otherwise enforce their lien and security interest in any transition property as if they were secured parties under Chapter 9, Business & Commerce Code, and the commission may order that amounts arising from transition charges be transferred to a separate account for the financing parties' benefit, to which their lien and security interest shall apply. On application by or on behalf of the financing parties, a district court of Travis County shall order the sequestration and payment to them of revenues arising from the transition charges.

Sec. 39.310. PLEDGE OF STATE. Transition bonds are not a debt or obligation of the state and are not a charge on its full faith and credit or taxing power. The state pledges, however, for the benefit and protection of financing parties and the electric utility, that it will not take or permit any action that would impair the value of transition property, or, except as permitted by Section 39.307, reduce, alter, or impair the transition charges to be imposed, collected, and remitted to financing parties, until the principal, interest and premium, and any other charges incurred and contracts to be performed in connection with the related transition bonds have been paid and performed in full. Any party issuing transition bonds is authorized to include this pledge in any documentation relating to those bonds.

Sec. 39.311. TAX EXEMPTION. Transactions involving the transfer and ownership of transition property and the receipt of transition charges are exempt from state and local income, sales, franchise, gross receipts, and other taxes or similar charges.

Sec. 39.312. NOT PUBLIC UTILITY. An assignee or financing party may not be considered to be a public utility or person providing electric service solely by virtue of the transactions described in this subchapter.

Sec. 39.313. SEVERABILITY. Effective on the date the first utility transition bonds are issued under this subchapter, if any provision in this title or portion of this title is held to be invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity or continuation of this

subchapter, Section 39.201, 39.251, 39.252, or 39.262, or any part of those provisions, or any other provision of this title that is relevant to the issuance, administration, payment, retirement, or refunding of transition bonds or to any actions of the electric utility, its successors, an assignee, a collection agent, or a financing party, which shall remain in full force and effect.

[Sections 39.314-39.350 reserved for expansion]

SUBCHAPTER H. CERTIFICATION AND REGISTRATION; PENALTIES

Sec. 39.351. REGISTRATION OF POWER GENERATION COMPANIES. (a) A person may not generate electricity unless the person is registered with the commission as a power generation company in accordance with this section. A person may register as a power generation company by filing the following information with the commission:

(1) a description of the location of any facility used to generate electricity;

(2) a description of the type of services provided;

(3) a copy of any information filed with the Federal Energy Regulatory Commission in connection with registration with that commission; and

(4) any other information required by commission rule, provided that in requiring that information the commission shall protect the competitive process in a manner that ensures the confidentiality of competitively sensitive information.

(b) A power generation company shall comply with the reliability standards adopted by an independent organization certified by the commission to ensure the reliability of the regional electrical network for a power region in which the power generation company is generating or selling electricity.

(c) A power generation company may register any time after September 1, 2000.

Sec. 39.352. CERTIFICATION OF RETAIL ELECTRIC PROVIDERS. (a) After the date of customer choice, a person, including an affiliate of an electric utility, may not provide retail electric service in this state unless the person is certified by the commission as a retail electric provider, in accordance with this section.

(b) The commission shall issue a certificate to provide retail electric service to a person applying for certification who demonstrates:

(1) the financial and technical resources to provide continuous and reliable electric service to customers in the area for which the certification is sought;

(2) the managerial and technical ability to supply electricity at retail in accordance with customer contracts;

(3) the resources needed to meet the customer protection requirements of this title; and

(4) ownership or lease of an office located within this state for the purpose of providing customer service, accepting service of process, and making available in that office books and records sufficient to establish the retail electric provider's compliance with the requirements of this subchapter.

(c) A person applying for certification under this section shall comply with all applicable customer protection provisions, disclosure requirements, and marketing guidelines established by the commission and by this title.

(d) Notwithstanding Subsections (b)(1)-(3), if a retail electric provider files with the commission a signed, notarized affidavit from each retail customer with which it has contracted to provide one megawatt or more of capacity stating that the customer is satisfied that the retail electric provider meets the standards prescribed by Subsections (b)(1)-(3) and Subsection (c), the retail electric provider shall be certified

for purposes of serving those customers only, so long as it demonstrates that it meets the requirements of Subsection (b)(4).

(e) A retail electric provider may apply for certification any time after September 1, 2000.

(f) The commission shall use any information required in this section in a manner that ensures the confidentiality of competitively sensitive information.

(g) If a retail electric provider serves an aggregate load in excess of 300 megawatts within this state, not less than five percent of the load in megawatt hours must consist of residential customers. This requirement applies to an affiliated retail electric provider only with respect to load served outside of the electric utility's service area, and, in relation to that load, the affiliated retail electric provider shall meet the requirements of this subsection by serving residential customers outside of the electric utility's service area. For the purpose of this subsection, the load served by retail electric providers that are under common ownership shall be combined. A retail electric provider may meet the requirements of this subsection by demonstrating on an annual basis that it serves residential load amounting to five percent of its total load, by demonstrating that another retail electric provider serves sufficient qualifying residential load on its behalf, or by paying an amount into the system benefit fund equal to $1 multiplied by a number equal to the difference between the number of megawatt hours it sold to residential customers and the number of megawatt hours it was required to sell to such customers, or in the case of an affiliated retail electric provider, $1 multiplied by a number equal to the difference between the number of megawatt hours sold to residential customers outside of the electric utility's service area and the number of megawatt hours it was required to sell to such customers outside of the electric utility's service area. Qualifying residential load may not include customers served by an affiliated retail electric provider in its own service area. Each retail electric provider shall file reports with the commission that are necessary to implement this subsection. This subsection applies for 36 months after retail competition begins. The commission shall adopt rules to implement this subsection.

Sec. 39.353. REGISTRATION OF AGGREGATORS. (a) A person may not provide aggregation services in the state unless the person is registered with the commission as an aggregator.

(b) In this subchapter, "aggregator" means a person joining two or more customers, other than municipalities and political subdivision corporations, into a single purchasing unit to negotiate the purchase of electricity from retail electric providers. Aggregators may not sell or take title to electricity. Retail electric providers are not aggregators.

(c) A person registering under this section shall comply with all customer protection provisions, all disclosure requirements, and all marketing guidelines established by the commission and by this title.

(d) The commission shall establish terms and conditions it determines necessary to regulate the reliability and integrity of aggregators in the state by June 1, 2000.

(e) An aggregator may register any time after September 1, 2000.

(f) The commission shall have up to 60 days to process applications for registration filed by aggregators.

(g) Registration is not required of a customer that is aggregating loads from its own location or facilities.

Sec. 39.354. REGISTRATION OF MUNICIPAL AGGREGATORS. (a) A municipal aggregator may not provide aggregation services in the state unless the municipal aggregator registers with the commission.

(b) In this section, "municipal aggregator" means a person authorized by two or more municipal governing bodies to join the bodies into a single purchasing unit to negotiate the purchase of electricity from retail electric providers.

(c) A municipal aggregator may register any time after September 1, 2000.

Sec. 39.3545. REGISTRATION OF POLITICAL SUBDIVISION AGGREGATORS. (a) A political subdivision aggregator may not provide aggregation services in the state unless the political subdivision aggregator registers with the commission.

(b) In this section, "political subdivision aggregator" means a person or political subdivision corporation authorized by two or more political subdivision governing bodies to join the bodies into a single purchasing unit or multiple purchasing units to negotiate the purchase of electricity from retail electric providers for the facilities of the aggregated political subdivisions.

(c) A political subdivision aggregator may register any time after September 1, 2000.

Sec. 39.355. REGISTRATION OF POWER MARKETERS. A person may not sell electric energy at wholesale as a power marketer unless the person registers with the commission.

Sec. 39.356. REVOCATION OF CERTIFICATION. (a) The commission may suspend, revoke, or amend a retail electric provider's certificate for significant violations of this title or the rules adopted under this title or of any reliability standard adopted by an independent organization certified by the commission to ensure the reliability of a power region's electrical network, including the failure to observe any scheduling, operating, planning, reliability, or settlement protocols established by the independent organization. The commission may also suspend or revoke a retail electric provider's certificate if the provider no longer has the financial or technical capability to provide continuous and reliable electric service.

(b) The commission may suspend or revoke a power generation company's registration for significant violations of this title or the rules adopted under this title or of the reliability standards adopted by an independent organization certified by the commission to ensure the reliability of a power region's electrical network, including the failure to observe any scheduling, operating, planning, reliability, or settlement protocols established by the independent organization.

(c) The commission may suspend or revoke an aggregator's registration for significant violations of this title or of the rules adopted under this title.

Sec. 39.357. ADMINISTRATIVE PENALTY. In addition to the suspension, revocation, or amendment of a certification, the commission may impose an administrative penalty, as provided by Section 15.023, for violations described by Section 39.356.

Sec. 39.358. LOCAL REGISTRATION OF RETAIL ELECTRIC PROVIDER. (a) A municipality may require a retail electric provider to register with the municipality as a condition of serving residents of the municipality. The municipality may assess a reasonable administrative fee for this purpose.

(b) The municipality may suspend or revoke a retail electric provider's registration and operation in that municipality for significant violations of this chapter or the rules adopted under this chapter.

[Sections 39.359-39.400 reserved for expansion]

SUBCHAPTER I. PROVISIONS FOR CERTAIN NON-ERCOT UTILITIES

Sec. 39.401. APPLICABILITY. This subchapter shall apply to investor-owned electric utilities operating solely outside of ERCOT having fewer than six synchronous interconnections with voltage levels above 69 kilovolts systemwide on the effective date of this subchapter. This subchapter recognizes that circumstances exist that require that areas served by such utilities be treated as competitive development areas in which full retail customer choice may develop on a more structured schedule than is anticipated for the rest of the state. If there are any conflicts between this subchapter and any other provisions of this chapter, the provisions of this subchapter shall control, but shall not be deemed to limit or in any way restrict any provision of this title that governs customer protection or quality or reliability of service.

Sec. 39.402. TRANSITION TO COMPETITION PLAN. All electric utilities subject to this subchapter shall file a transition to competition plan with the commission not later than December 1, 2000. This transition to competition plan shall identify how utilities subject to this subchapter shall achieve full customer choice, including specific alternatives for constructing additional transmission facilities, auctioning rights to generation capacity, divesting generation capacity, or any other measure necessary for the electric utility to meet the requirements of Section 39.152(a) and that is consistent with the public interest. The commission shall approve, modify, or reject a plan within 180 days after the date of a filing under this section. The transition to competition plan may be updated or amended as circumstances change, subject to commission approval.

Sec. 39.403. UNBUNDLING. Electric utilities subject to this subchapter shall unbundle as required by Section 39.051.

Sec. 39.404. RATE FREEZE. Electric utilities subject to this subchapter shall freeze their rates until January 1, 2002, as required by Section 39.052. The price to beat established pursuant to Section 39.406 shall become effective January 1, 2002. For customer classes other than residential and small commercial customers, an electric utility subject to this subchapter may not charge rates that are higher than the rates that, on a bundled basis, were in effect January 1, 1999, until the region qualifies for competition or until rates are reset pursuant to Section 39.405(c).

Sec. 39.405. PILOT PROJECT. (a) Electric utilities subject to this subchapter shall undertake a pilot project as set forth in Section 39.104. As part of approving an electric utility's transition to competition plan pursuant to Section 39.402, the commission shall extend the duration of the pilot project beyond January 1, 2002, and expand the percentage of participation in the pilot project beyond the five percent level prescribed by Section 39.104 based on the market conditions in the region and consistent with the level of competition that the region can support. The commission shall review the pilot project as circumstances change and may adjust the percentage level of participation consistent with this subsection.

(b) An electric utility subject to this subchapter shall design any customer choice pilot project it undertakes pursuant to Section 39.104 in such a manner that there is a proportional participation between customers receiving service from the utility located in a service area that is certificated solely to the utility and those customers of the utility that are located in a multiply certificated area. The utility shall file reports pursuant to this section with the commission to permit it to monitor whether proportional participation is achieved. Nothing in this section requires a utility to design a pilot project to serve in multiply certificated areas.

(c) If any electric utility subject to this subchapter fails to meet the requirements of Section 39.152(a), a proceeding under Section 36.102 or 36.151 may be filed after January 1, 2006, to set its rates effective one year after the date of the filing.

Sec. 39.406. PRICE TO BEAT. Electric utilities subject to this subchapter shall include within their transition to competition plans pursuant to Section 39.402 a provision to establish the price to beat under Section 39.202. The commission may reduce rates by six percent consistent with Section 39.202(a) unless it determines that a lesser reduction is necessary and consistent with the capital requirements needed to develop the infrastructure necessary to facilitate competition among electric generators.

Sec. 39.407. RELEVANT MARKET AND RELATED MATTERS. (a) The commission shall certify that the requirements of Section 39.152(a)(3) are met for electric utilities subject to this subchapter, only upon a finding that the total capacity owned and controlled by each such electric utility and its affiliates does not exceed 20 percent of the total installed generation capacity within the constrained geographic region served by each such electric utility plus the total available transmission capacity capable of delivering firm power and energy to that constrained geographic region.

(b) In the area of a power region served by an electric utility subject to this subchapter, if customer choice is introduced before the requirements of Section 39.152(a) are met, an affiliated retail electric provider of an electric utility subject to this subchapter may not compete for retail customers in any area of the power region that is within this state and outside of the affiliated transmission and distribution utility's certificated service area unless the affiliated power generation company makes a commitment to maintain and does maintain rates that are based on cost of service for any electric cooperative or municipal utility that was a wholesale customer on January 1, 1999, and was purchasing power at rates that were based on cost of service. This subsection requires a power generation company to sell power at rates that are based on cost of service, notwithstanding the expiration of a contract for that service, until the requirements of Section 39.152(a) are met.

(c) If the requirements of Section 39.152(a) have not been met for an electric utility subject to this subchapter, then any power generation company in the power region affiliated with an electric utility subject to this subchapter shall maintain adequate supply and facilities to provide electric service to persons who were or would have been retail customers of the affiliated retail electric provider on December 31, 2001. The obligation provided by this subsection remains in effect until the commission determines that the requirements of Section 39.152(a) have been met for the region.

Sec. 39.408. USE OF REVENUES FOR UTILITIES WITH NO STRANDED COSTS. In addition to the permitted uses for any positive difference under the report required by Section 39.257(b) set forth in Section 39.255, during the freeze period ending December 31, 2001, electric utilities subject to this subchapter may request, subject to approval by the commission, to use such positive differences to accelerate the amortization of their regulatory assets.

[Sections 39.409-39.900 reserved for expansion]

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 39.901. SCHOOL FUNDING LOSS MECHANISM. (a) Not later than March 1 each year, the comptroller shall certify to the Texas Education Agency any property wealth reductions, determined by taking the difference between current year and prior year appraisal values attributable to electric utility restructuring.

(b) The Texas Education Agency shall determine the reduction of the amount of property taxes recaptured by the state from school districts subject to wealth equalization under Chapter 41, Education Code, as a result of the property wealth reductions certified under Subsection (a) and shall notify the commission of the amount necessary to compensate the state for the reduction.

(c) The Texas Education Agency shall determine the amount necessary to compensate school districts for lost revenue resulting from the property wealth reductions under Subsection (a) and shall notify the commission of this amount. The amounts necessary to compensate districts shall be the sum of:

(1) decreases in the level of funding to which a school district is entitled under Chapters 42 and 46, Education Code, that are directly attributable to the decline in property values caused by utility restructuring; and

(2) losses of property tax collections incurred by school districts that are directly attributable to property value declines caused by utility restructuring and that are not accounted for under Subdivision (1), including amounts that a school district would be entitled to retain under Chapter 41, Education Code.

(d) The amounts determined by the comptroller and the Texas Education Agency under this section, for the purposes of this section, are final and may not be appealed.

(e) Not later than May 1 of each year, the commission shall transfer from the system benefit fund to the foundation school fund the amounts determined by the Texas Education Agency under Subsections (b) and (c). If in any year the system benefit fund is insufficient to make the transfer designated by the Texas Education Agency, the shortfall shall be included in the projected revenue requirement for the system benefit fund the next time the commission sets the fee under Section 39.903, and the shortfall amount shall be transferred to the Foundation School Program the following year. Amounts transferred from the system benefit fund under this section may be appropriated only for the support of the Foundation School Program and are available, in addition to any amounts allocated by the General Appropriations Act, to finance actions under Section 41.002(b) or 42.252(e), Education Code.

(f) The Texas Education Agency shall, on the transfer of funds from the system benefit fund to the foundation school fund, compensate school districts for losses incurred under Subsection (c).

(g) The commissioner of education and the comptroller shall adopt rules necessary to implement this section, including rules providing for public input.

(h) This section is effective through the 2006-2007 school year. This section expires August 31, 2007.

Sec. 39.902. CUSTOMER EDUCATION. (a) On or before January 1, 2001, the commission shall develop and implement an educational program to inform customers, including low-income and non-English-speaking customers, about changes in the provision of electric service resulting from the opening of the retail electric market and the customer choice pilot program under this chapter. The educational program shall be neutral and nonpromotional and shall provide customers with the information necessary to make informed decisions relating to the source and type of electric service available for purchase and other information the commission considers necessary. The educational program may not be targeted to areas served by municipally owned utilities or electric cooperatives that have not adopted customer choice. In planning and implementing this program, the commission shall consult with the office, with the Texas Department of Housing and Community Affairs, and with

customers of and providers of retail electric service. The commission may enter into contracts for professional services to carry out the customer education program.

(b) The commission shall report on the status of the educational program, developed and implemented as provided by Subsection (a), to the electric utility restructuring legislative oversight committee on or before December 1, 2001.

(c) After the opening of the retail electric market, the commission shall conduct ongoing customer education designed to help customers make informed choices of electric services and retail electric providers. As part of ongoing education, the commission may provide customers information concerning specific retail electric providers, including instances of complaints against them and records relating to quality of customer service.

Sec. 39.903. SYSTEM BENEFIT FUND. (a) The commission shall establish the system benefit fund.

(b) The system benefit fund is financed by a nonbypassable fee set by the commission in an amount not to exceed 50 cents per megawatt hour, provided that, in any year, the sum of the revenue collected through the nonbypassable fee and any retained surplus in the system benefit fund may not exceed 125 percent of the projected revenue requirements for the fund.

(c) The nonbypassable fee may not be imposed on the retail electric customers of a municipally owned utility or electric cooperative before the sixth month preceding the date on which the utility or cooperative implements customer choice. On request by a municipally owned utility or electric cooperative, the commission shall reduce the nonbypassable fee imposed on retail electric customers served by the municipally owned utility or electric cooperative by an amount equal to the amount provided by the municipally owned utility or electric cooperative or its ratepayers for local low-income programs and local programs that educate customers about the retail electric market in a neutral and nonpromotional manner.

(d) Not later than March 1 of each year, the commission shall review and approve system benefit fund accounts, projected revenue requirements, and proposed nonbypassable fees.

(e) The system benefit fund shall provide funding solely for the following regulatory purposes:

(1) customer education programs;

(2) programs to assist low-income electric customers provided by Subsections (f)-(k); and

(3) the school funding loss mechanism provided by Section 39.901.

(f) Notwithstanding Section 39.106(b), the commission shall adopt rules regarding programs to assist low-income electric customers. The programs may not be targeted to areas served by municipally owned utilities or electric cooperatives that have not adopted customer choice. The programs shall include:

(1) reduced electric rates as provided by Subsections (g)-(k); and

(2) targeted energy efficiency programs to be administered by the Texas Department of Housing and Community Affairs in coordination with existing weatherization programs.

(g) Until January 1, 2002, an electric utility may not reduce, in any manner, programs already offered to assist low-income electric customers.

(h) Following the introduction of customer choice, the commission shall adopt rules to determine a reduced rate 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.

(i) The commission may provide for a reduced rate:

(1) during periods when severe weather occurs or is likely to occur; or

(2) for customers living in all-electric dwelling units or who depend on electrically operated medical equipment.

(j) A retail electric provider not subject to the price to beat shall be reimbursed for the difference between the reduced rate and the rate established under Section 39.106. A retail electric provider who is subject to the price to beat shall be reimbursed for the difference between the reduced rate and the price to beat.

(k) A retail electric provider is prohibited from charging the customer a fee for participation in the reduced rate program.

(l) For the purposes of this section, a "low-income electric customer" is an electric customer who is a qualifying low-income consumer as defined by the commission.

Sec. 39.904. GOAL FOR RENEWABLE ENERGY. (a) It is the intent of the legislature that by January 1, 2009, an additional 2,000 megawatts of generating capacity from renewable technologies will have been installed in this state. The cumulative installed renewable capacity in this state shall total 1,280 megawatts by January 1, 2003, 1,730 megawatts by January 1, 2005, 2,280 megawatts by January 1, 2007, and 2,880 megawatts by January 1, 2009.

(b) The commission shall establish a renewable energy credits trading program. Any retail electric provider, municipally owned utility, or electric cooperative that does not satisfy the requirements of Subsection (a) by directly owning or purchasing capacity using renewable energy technologies shall purchase sufficient renewable energy credits to satisfy the requirements by holding renewable energy credits in lieu of capacity from renewable energy technologies.

(c) Not later than January 1, 2000, the commission shall adopt rules necessary to administer and enforce this section. At a minimum, the rules shall:

(1) establish the minimum annual renewable energy requirement for each retail electric provider, municipally owned utility, and electric cooperative operating in this state in a manner reasonably calculated by the commission to produce, on a statewide basis, compliance with the requirement prescribed by Subsection (a); and

(2) specify reasonable performance standards that all renewable capacity additions must meet to count against the requirement prescribed by Subsection (a) and that:

(A) are designed and operated so as to maximize the energy output from the capacity additions in accordance with then-current industry standards; and

(B) encourage the development, construction, and operation of new renewable energy projects at those sites in this state that have the greatest economic potential for capture and development of this state's environmentally beneficial renewable resources.

(d) In this section, "renewable energy technology" means any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun, or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, on wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based

waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

(e) A municipally owned utility operating a gas distribution system may credit toward satisfaction of the requirements of this section any production or acquisition of landfill gas supplied to the gas distribution system, based on conversion to kilowatt hours of the thermal energy content in British thermal units of the renewable source and using for the conversion factor the annual heat rate of the most efficient gas-fired unit of the combined utility's electric system as measured in British thermal units per kilowatt hour and using the British thermal unit measurement based on the higher heating value measurement.

Sec. 39.9044. GOAL FOR NATURAL GAS. (a) It is the intent of the legislature that 50 percent of the megawatts of generating capacity installed in this state after January 1, 2000, use natural gas. To the extent permitted by law, the commission shall establish a program to encourage utilities to comply with this section by using natural gas produced in this state as the preferential fuel. This section does not apply to generating capacity for renewable technologies.

(b) The commission shall establish a natural gas energy credits trading program. Any power generation company, municipally owned utility, or electric cooperative that does not satisfy the requirements of Subsection (a) by directly owning or purchasing capacity using natural gas technologies shall purchase sufficient natural gas energy credits to satisfy the requirements by holding natural gas energy credits in lieu of capacity from natural gas energy technologies.

(c) Not later than January 1, 2000, the commission shall adopt rules necessary to administer and enforce this section and to perform any necessary studies in cooperation with the Railroad Commission of Texas. At a minimum, the rules shall:

(1) establish the minimum annual natural gas generation requirement for each power generation company, municipally owned utility, and electric cooperative operating in this state in a manner reasonably calculated by the commission to produce, on a statewide basis, compliance with the requirement prescribed by Subsection (a); and

(2) specify reasonable performance standards that all natural gas capacity additions must meet to count against the requirement prescribed by Subsection (a) and that:

(A) are designed and operated so as to maximize the energy output from the capacity additions in accordance with then-current industry standards and best industry standards; and

(B) encourage the development, construction, and operation of new natural gas energy projects at those sites in this state that have the greatest economic potential for capture and development of this state's environmentally beneficial natural gas resources.

(d) The commission, with the assistance of the Railroad Commission of Texas, shall adopt rules allowing and encouraging retail electric providers and municipally owned utilities and electric cooperatives that have adopted customer choice to market electricity generated using natural gas produced in this state as environmentally beneficial. The rules shall allow a provider, municipally owned utility, or cooperative to:

(1) emphasize that natural gas produced in this state is the cleanest-burning fossil fuel; and

(2) label the electricity generated using natural gas produced in this state as "green" electricity.

(e) In this section, "natural gas technology" means any technology that exclusively relies on natural gas as a primary fuel source.

Sec. 39.9048. NATURAL GAS FUEL. It is the intent of the legislature that:

(1) the cost of generating electricity remain as low as possible;

(2) the state establish and publicize a program to keep the costs of fuel, such as natural gas, used for generating electricity low; and

(3) as part of the program relating to natural gas established under Subdivision (1), the commission work with the comptroller in implementing, administering, and publicizing the tax refunds and credits provided by Sections 191.0825 and 201.059, Tax Code.

Sec. 39.905. GOAL FOR ENERGY EFFICIENCY. (a) It is the intent of the legislature that:

(1) electric utilities administer customer information and energy savings incentive programs in a market-neutral, nondiscriminatory manner, but 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 allows each customer to reduce energy consumption and reduce energy costs;

(3) electric utilities be allowed to offer loans at below-market interest rates for energy efficiency investments, other energy efficiency market transformation programs that result in below-market cost to the customer, and grants and other special programs to address the needs of small businesses, tenants, low-income consumers, and other customer groups not served by market-based incentive programs; and

(4) electric utilities acquire, through market-based standard offer programs or limited targeted market transformation programs, additional cost-effective energy efficiency equivalent to at least 25 percent of each year's annual growth in demand.

(b) The commission shall provide oversight and adopt rules, procedures, and penalties, as necessary, to ensure that the intent of this section is achieved.

Sec. 39.906. DISPLACED WORKERS. In order to mitigate potential negative impacts on utility personnel directly affected by electric industry restructuring, the commission shall allow the recovery of reasonable employee related transition costs incurred and projected for severance, retraining, early retirement, outplacement, and related expenses for the employees.

Sec. 39.907. LEGISLATIVE OVERSIGHT COMMITTEE. (a) In this section, "committee" means the electric utility restructuring legislative oversight committee.

(b) The committee is composed of six members as follows:

(1) the chair of the Senate Committee on Economic Development and the chair of the House Committee on State Affairs, who shall serve as joint chairs of the committee;

(2) two members of the senate appointed by the lieutenant governor; and

(3) two members of the house of representatives appointed by the speaker of the house of representatives.

(c) An appointed member of the committee serves at the pleasure of the appointing official.

(d) The committee is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the committee is abolished September 1, 2005.

(e) The committee shall:

(1) meet at least annually with the commission;

(2) receive information about rules relating to electric utility restructuring proposed by the commission and may submit comments to the commission on those proposed rules;

(3) review recommendations for legislation proposed by the commission; and

(4) monitor the effectiveness of electric utility restructuring, including the fairness of rates, the reliability of service, and the effect of stranded costs, market power, and regulation on the normal forces of competition.

(f) The committee may request reports and other information from the commission as necessary to carry out this section.

(g) Not later than November 15 of each even-numbered year, the committee shall report to the governor, lieutenant governor, and speaker of the house of representatives on the committee's activities under Subsection (e). The report shall include:

(1) an analysis of any problems caused by electric utility restructuring; and

(2) recommendations of any legislative action necessary to address those problems and to further retail competition within the electric power industry.

Sec. 39.908. EFFECT OF SUNSET PROVISION. (a) If the commission is abolished and the other provisions of this title expire as provided by Chapter 325, Government Code (Texas Sunset Act), this subchapter, including the provisions of this title referred to in this subchapter, continues in full force and effect and does not expire.

(b) The authorities, duties, and functions of the commission under this chapter shall be performed and carried out by a successor agency to be designated by the legislature before abolishment of the commission or, if the legislature does not designate the successor, by the secretary of state.

CHAPTER 40. COMPETITION FOR MUNICIPALLY OWNED UTILITIES AND RIVER AUTHORITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 40.001. APPLICABLE LAW. (a) Notwithstanding any other provision of law, except Sections 39.155, 39.157(e), 39.203, 39.903, and 39.904, this chapter governs the transition to and the establishment of a fully competitive electric power industry for municipally owned utilities. With respect to the regulation of municipally owned utilities, this chapter controls over any other provision of this title, except for sections in which the term "municipally owned utility" is specifically used.

(b) Except as specifically provided in this subsection, Chapter 39 does not apply to a river authority operating a steam generating plant on or before January 1, 1999, or a corporation authorized by Chapter 245, Acts of the 67th Legislature, Regular Session, 1981 (Article 717p, Vernon's Texas Civil Statutes), or Section 32.053. A river authority operating a steam generating plant on or before January 1, 1999, is subject to Sections 39.051(a)-(c), 39.108, 39.155, 39.157(e), and 39.203.

(c) For purposes of Section 39.051, hydroelectric assets may not be deemed to be generating assets, and the transfer of generating assets to a corporation authorized by Chapter 245, Acts of the 67th Legislature, Regular Session, 1981 (Article 717p, Vernon's Texas Civil Statutes), satisfies the requirements of Section 39.051.

(d) Accommodation shall be made in the code of conduct established under Section 39.157(e) for the provisions of Chapter 245, Acts of the 67th Legislature, Regular Session, 1981 (Article 717p, Vernon's Texas Civil Statutes), and the commission may not prohibit a river authority and any related corporation from

sharing officers, directors, employees, equipment, and facilities or from providing goods or services to each other at cost without the need for a competitive bid.

Sec. 40.002. DEFINITION. For purposes of this chapter, "body vested with the power to manage and operate a municipally owned utility" shall mean a body created in accordance with Article 1115 or 1115a, Revised Statutes, or by municipal charter.

Sec. 40.003. SECURITIZATION. (a) Municipally owned utilities and river authorities may adopt and use securitization provisions having the effect of the provisions provided by Subchapter G, Chapter 39, to recover through appropriate charges their stranded costs, at a recovery level deemed appropriate by the municipally owned utility or river authority up to 100 percent, under rules and procedures that shall be established:

(1) in the case of a municipally owned utility, by the municipal governing body or a body vested with the power to manage and operate the municipally owned utility, including procedures providing for rate orders of the governing body having the effect of financing orders, providing for a separate nonbypassable charge approved by the governing body, in the nature of a transition charge, to be collected from all retail electric customers of the municipally owned utility, identified as of a date determined by the governing body, to fund the recovery of the stranded costs of the municipally owned utility and of all reasonable related expenses, as determined by the governing body, and providing for the issuance of bonds, having a term and other characteristics as determined by the governing body, as necessary to recover the amount deemed appropriate by the governing body through securitization financing; and

(2) in the case of a river authority, by the commission.

(b) In order to implement securitization financing under the rules and procedures established by and for a municipally owned utility under Subsection (a)(1), municipalities are expressly authorized and empowered to issue bonds, notes, or other obligations, including refunding bonds, payable from and secured by a lien on and pledge of the revenues collected under an order of the governing body of the municipality, and the bonds shall be issued, without an election or any requirement of giving notice of intent to issue the bonds, by ordinance adopted by the governing body of the municipality, in the form and manner and sold on a negotiated basis or on receipt of bids and on the terms and conditions as shall be determined by the governing body of the municipality.

(c) Bonds issued under the authority conferred by Subsections (a)(1) and (2) and Subsection (b) may be issued in the form and manner, with or without credit enhancement or liquidity enhancement and using the procedures as provided in the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes) or other laws applicable to the issuance of bonds, including Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes), Chapter 503, Acts of the 54th Legislature, Regular Session, 1955 (Article 717k, Vernon's Texas Civil Statutes), and Chapter 642, Acts of the 65th Legislature, Regular Session, 1977 (Article 1118n-12, Vernon's Texas Civil Statutes) as if those laws were fully restated in this section and made a part of this section for all purposes, and a municipality or river authority shall have the right and authority to use those other laws, notwithstanding any applicable restrictions contained in those laws, to the extent convenient or necessary to carry out any power or authority, express or implied, granted under this section, in the issuance of bonds by a municipality or river authority

in connection with securitization financing. This section is wholly sufficient authority for the issuance of bonds, notes, or other obligations, including refunding bonds, and the performance of the other authorized acts and procedures, without reference to any other laws or any restrictions or limitations contained in those laws. To the extent of any conflict or inconsistency between the provisions of this authorization and any provisions of any other law or home-rule charter, the authorization and power to issue bonds conferred on municipalities or river authorities under this section shall prevail and control.

(d) The rules and procedures for securitization established by the commission under Subsection (a)(2) shall include procedures for the recovery of qualified costs under the terms of a financing order adopted by the governing body of the river authority.

(e) The rules and procedures for securitization established by the commission under Subsection (a)(2) shall include rules and procedures for the issuance of transition bonds. Findings made by the governing body of a river authority in a financing order issued under the rules and procedures described in this subsection shall be conclusive, and any nonbypassable transition charge incorporated in the rate order to recover the principal, interest, and all reasonable expenses associated with any transition bonds shall constitute property rights, as described in Subchapter G, Chapter 39, and otherwise conform in all material respects to the nonbypassable transition charges provided by Subchapter G, Chapter 39.

(f) The rules and procedures established under this section shall be consistent with other law applicable to municipally owned utilities and river authorities and with the terms of any resolutions, orders, charter provisions, or ordinances authorizing outstanding bonds or other indebtedness of the municipalities or river authorities.

Sec. 40.004. JURISDICTION OF COMMISSION. Except as specifically otherwise provided in this chapter, the commission has jurisdiction over municipally owned utilities only for the following purposes:

(1) to regulate wholesale transmission rates and service, including terms of access, to the extent provided by Subchapter A, Chapter 35;

(2) to regulate certification of retail service areas to the extent provided by Chapter 37;

(3) to regulate rates on appeal under Subchapters D and E, Chapter 33, subject to Section 40.051(c);

(4) to establish a code of conduct as provided by Section 39.157(e) applicable to anticompetitive activities and to affiliate activities limited to structurally unbundled affiliates of municipally owned utilities, subject to Section 40.054;

(5) to establish terms and conditions for open access to transmission and distribution facilities for municipally owned utilities providing customer choice, as provided by Section 39.203;

(6) to require collection of the nonbypassable fee established under Section 39.903(b) and to administer the renewable energy credits program under Section 39.904(b); and

(7) to require reports of municipally owned utility operations only to the extent necessary to:

(A) enable the commission to determine the aggregate load and energy requirements of the state and the resources available to serve that load; or

(B) enable the commission to determine information relating to market power as provided by Section 39.155.

[Sections 40.005-40.050 reserved for expansion]

SUBCHAPTER B. MUNICIPALLY OWNED UTILITY CHOICE

Sec. 40.051. GOVERNING BODY DECISION. (a) The municipal governing body or a body vested with the power to manage and operate a municipally owned utility has the discretion to decide when or if the municipally owned utility will provide customer choice.

(b) Municipally owned utilities may choose to participate in customer choice at any time on or after January 1, 2002, by adoption of an appropriate resolution of the municipal governing body or a body vested with power to manage and operate the municipally owned utility. The decision to participate in customer choice by the adoption of a resolution is irrevocable.

(c) After a decision to offer customer choice has been made, Subchapters D and E, Chapter 33, do not apply to any action taken under this chapter.

Sec. 40.052. UTILITY NOT OFFERING CUSTOMER CHOICE. (a) A municipally owned utility that has not chosen to participate in customer choice may not offer electric energy at unregulated prices directly to retail customers outside its certificated retail service area.

(b) A municipally owned utility under Subsection (a) retains the right to offer and provide a full range of customer service and pricing programs to the customers within its certificated area and to purchase and sell electric energy at wholesale without geographic restriction.

Sec. 40.053. RETAIL CUSTOMER'S RIGHT OF CHOICE. (a) If a municipally owned utility chooses to participate in customer choice, after that choice all retail customers served by the municipally owned utility within the certificated retail service area of the municipally owned utility shall have the right of customer choice consistent with the provisions of this chapter, and the municipally owned utility shall provide open access for retail service.

(b) Notwithstanding Section 39.107, the metering function may not be deemed a competitive service for customers of the municipally owned utility within that service area and may, at the option of the municipally owned utility, continue to be offered by the municipally owned utility as sole provider.

(c) On its initiation of customer choice, a municipally owned utility shall designate itself or another entity as the provider of last resort for customers within the municipally owned utility's certificated service area as that area existed on the date of the utility's initiation of customer choice. The municipally owned utility shall fulfill the role of default provider of last resort in the event no other entity is available to act in that capacity.

(d) If a customer is unable to obtain service from a retail electric provider, on request by the customer, the provider of last resort shall offer the customer the standard retail service package for the appropriate customer class, with no interruption of service, at a fixed, nondiscountable rate that is at least sufficient to cover the reasonable costs of providing that service, as approved by the governing body of the municipally owned utility that has the authority to set rates.

(e) The governing body of a municipally owned utility may establish the procedures and criteria for designating the provider of last resort and may redesignate the provider of last resort according to a schedule it considers appropriate.

Sec. 40.054. SERVICE OUTSIDE AREA. (a) A municipally owned utility participating in customer choice shall have the right to offer electric energy and related

services at unregulated prices directly to retail customers who have customer choice without regard to geographic location.

(b) In providing service under Subsection (a) to retail customers outside its certificated retail service area as that area exists on the date of adoption of customer choice, a municipally owned utility is subject to the commission's rules establishing a code of conduct regulating anticompetitive practices.

(c) For municipally owned utilities participating in customer choice, the commission shall have jurisdiction to establish terms and conditions, but not rates, for access by other retail electric providers to the municipally owned utility's distribution facilities.

(d) Accommodation shall be made in the commission's terms and conditions for access and in the code of conduct for specific legal requirements imposed by state or federal law applicable to municipally owned utilities.

(e) The commission does not have jurisdiction to require unbundling of services or functions of, or to regulate the recovery of stranded investment of, a municipally owned utility or, except as provided by this section, jurisdiction with respect to the rates, terms, and conditions of service for retail customers of a municipally owned utility within the utility's certificated service area.

(f) A municipally owned utility shall maintain separate books and records of its operations from those of the operations of any affiliate.

Sec. 40.055. JURISDICTION OF MUNICIPAL GOVERNING BODY. (a) The municipal governing body or a body vested with the power to manage and operate a municipally owned utility has exclusive jurisdiction to:

(1) set all terms of access, conditions, and rates applicable to services provided by the municipally owned utility, subject to Sections 40.054 and 40.056, including nondiscriminatory and comparable rates for distribution but excluding wholesale transmission rates, terms of access, and conditions for wholesale transmission service set by the commission under this subtitle, provided that the rates for distribution access established by the municipal governing body shall be comparable to the distribution access rates that apply to the municipally owned utility and the municipally owned utility's affiliates;

(2) determine whether to unbundle any energy-related activities and, if the municipally owned utility chooses to unbundle, whether to do so structurally or functionally;

(3) reasonably determine the amount of the municipally owned utility's stranded investment;

(4) establish nondiscriminatory transition charges reasonably designed to recover the stranded investment over an appropriate period of time, provided that recovery of retail stranded costs shall be from all existing or future retail customers, including the facilities, premises, and loads of those retail customers, within the utility's geographical certificated service area as it existed on May 1, 1999;

(5) determine the extent to which the municipally owned utility will provide various customer services at the distribution level, including other services that the municipally owned utility is legally authorized to provide, or will accept the services from other providers;

(6) manage and operate the municipality's electric utility systems, including exercise of control over resource acquisition and any related expansion programs;

(7) establish and enforce service quality and reliability standards and consumer safeguards designed to protect retail electric customers, including safeguards that will accomplish the objectives of Sections 39.101(a) and (b), consistent with this chapter;

(8) determine whether a base rate reduction is appropriate for the municipally owned utility;

(9) determine any other utility matters that the municipal governing body or body vested with power to manage and operate the municipally owned utility believes should be included; and

(10) make any other decisions affecting the municipally owned utility's participation in customer choice that are not inconsistent with this chapter.

(b) In multiply certificated areas, a retail customer, including a retail customer of an electric cooperative or a municipally owned utility, may not avoid stranded cost recovery charges by switching to another electric utility, electric cooperative, or municipally owned utility.

Sec. 40.056. ANTICOMPETITIVE ACTIONS. (a) If, on complaint by a retail electric provider, the commission finds that a municipal rule, action, or order relating to customer choice is anticompetitive or does not provide other retail electric providers with nondiscriminatory terms and conditions of access to distribution facilities or customers within the municipally owned utility's certificated retail service area that are comparable to the municipally owned utility's and its affiliates' terms and conditions of access to distribution facilities or customers, the commission shall notify the municipally owned utility.

(b) The municipally owned utility shall have three months to cure the anticompetitive or noncompliant behavior described in Subsection (a), following opportunity for hearing on the complaint. If the rule, action, or order is not fully remedied within that time, the commission may prohibit the municipally owned utility or affiliate from providing retail service outside its certificated retail service area until the rule, action, or order is remedied.

Sec. 40.057. BILLING. (a) A municipally owned utility that opts for customer choice may continue to bill directly electric customers located in its certificated retail service area, as that area exists on the date of adoption of customer choice, for all transmission and distribution services. The municipally owned utility may also bill directly for generation services and customer services provided by the municipally owned utility to those customers.

(b) A municipally owned utility that opts for customer choice may not adopt anticompetitive billing practices that would discourage customers in its service area from choosing a retail electric provider.

(c) A customer that is being provided wires service by a municipally owned utility at distribution or transmission voltage and that is served by a retail electric provider for retail service has the option of being billed directly by each service provider or to receive a single bill for distribution, transmission, and generation services from the municipally owned utility.

Sec. 40.058. TARIFFS FOR OPEN ACCESS. A municipally owned utility that owns or operates transmission and distribution facilities shall file with the commission tariffs implementing the open access rules established by the commission under Section 39.203 and shall file with the commission the rates for open access on distribution facilities as set by the municipal regulatory authority, before the 90th day

preceding the date the utility offers customer choice. The commission does not have authority to determine the rates for distribution access service for a municipally owned utility.

Sec. 40.059. MUNICIPAL POWER AGENCY; RECOVERY OF STRANDED COSTS. (a) In this section, "member city" means a municipality that participated in the creation of a municipal power agency formed under Chapter 163 by the adoption of a concurrent resolution by the municipality on or before August 1, 1975.

(b) After a member city adopts a resolution choosing to participate in customer choice under Section 40.051(b), a member city may include stranded costs described in Subsection (c) in its distribution costs and may recover those costs through a nonbypassable charge. The nonbypassable charge shall be as determined by the member city's governing body and may be spread over 16 years.

(c) The stranded costs that may be recovered under this section are those costs that were determined by the commission and stated in the commission's April 1998 Report to the Texas Senate Interim Committee on Electric Utility Restructuring entitled "Potentially Strandable Investment (ECOM) Report: 1998 Update" and specifically stated in the report at Appendix A (ECOM Estimates Including the Effects of Transition Plans) under the commission base case benchmark base market price for the year 2002.

(d) The stranded cost amounts described in this section may not be included in the generation costs used in setting rates by the member city's governing body.

(e) The provisions of this section are cumulative of all other provisions of this chapter, and nothing in this section shall be construed to limit or restrict the application of any provision of this chapter to the member cities.

(f) The municipal power agency shall extinguish the agency's indebtedness by sale of the electric facility to one or more purchasers, by way of a sale through the issuance of taxable or tax-exempt debt to the member cities, or by any other method. The agency shall set as an objective the extinguishment of the agency's debt by September 1, 2000. In the event this objective is not met, the agency shall provide detailed reasons to the electric utility restructuring legislative oversight committee by November 1, 2000, why the agency was not able to meet this objective.

(g) The municipal power agency or its successor in interest may, at its option, use the rate of return method for calculating its transmission cost of service. If the rate of return method is used, the return component for the transmission cost of service revenue requirement shall be sufficient to meet the transmission function's pro rata share of levelized debt service and debt service coverage ratio (1.50) and other annual debt obligations, provided, however, that the total levelized debt service may not exceed the total debt service under the current payment schedule. Any additional revenue generated by the methodology described in this subsection shall be applied to reduce the agency's outstanding indebtedness.

Sec. 40.060. NO POWER TO AMEND CERTIFICATES. Nothing in this chapter empowers a municipal governing body or a body vested with the power to manage and operate a municipally owned utility to issue, amend, or rescind a certificate of public convenience and necessity granted by the commission. This subsection does not affect the ability of a municipal governing body or a body vested with the power to manage and operate the municipally owned utility to pass a resolution under Section 40.051(b).

Sec. 40.061. UNAUTHORIZED RETAIL ACCESS TO DISTRIBUTION FACILITIES. A municipally owned utility that has not adopted customer choice may

not be required to provide access over its facilities for service to its retail customer in its certificated service area.

[Sections 40.062-40.100 reserved for expansion]

SUBCHAPTER C. RIGHTS NOT AFFECTED

Sec. 40.101. INTERFERENCE WITH CONTRACT. (a) This subtitle may not interfere with or abrogate the rights or obligations of parties, including a retail or wholesale customer, to a contract with a municipally owned utility or river authority.

(b) This subtitle may not interfere with or abrogate the rights or obligations of a party under a contract or agreement concerning certificated utility service areas.

Sec. 40.102. ACCESS TO WHOLESALE MARKET. Nothing in this subtitle shall limit the access of municipally owned utilities to the wholesale electric market.

Sec. 40.103. PROTECTION OF BONDHOLDERS. Nothing in this subtitle or any rule adopted under this subtitle shall impair contracts, covenants, or obligations between this state, river authorities, municipalities, and the bondholders of revenue bonds issued by the river authorities or municipalities.

Sec. 40.104. TAX-EXEMPT STATUS. Nothing in this subtitle may impair the tax-exempt status of municipalities, electric cooperatives, or river authorities, nor shall anything in this subtitle compel any municipality, electric cooperative, or river authority to use its facilities in a manner that violates any contractual provisions, bond covenants, or other restrictions applicable to facilities financed by tax-exempt debt. Notwithstanding any other provision of law, the decision to participate in customer choice by the adoption of a resolution in accordance with Section 40.051(b) is irrevocable.

CHAPTER 41. ELECTRIC COOPERATIVES AND COMPETITION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 41.001. APPLICABLE LAW. Notwithstanding any other provision of law, except Sections 39.155, 39.157(e), 39.203, 39.903, and 39.904, this chapter governs the transition to and the establishment of a fully competitive electric power industry for electric cooperatives. Regarding the regulation of electric cooperatives, this chapter shall control over any other provision of this title, except for sections in which the term "electric cooperative" is specifically used.

Sec. 41.002. DEFINITIONS. In this chapter:

(1) "Board of directors" means the board of directors of an electric cooperative as described in Section 161.071.

(2) "Rate" includes any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by an electric cooperative for any service, product, or commodity and any rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification.

(3) "Stranded investment" means:

(A) the excess, if any, of the net book value of generation assets over the market value of the generation assets; and

(B) any above market purchased power costs.

Sec. 41.003. SECURITIZATION. (a) Electric cooperatives may adopt and use securitization provisions having the effect of the provisions provided by Subchapter G, Chapter 39, to recover through rates stranded costs at a recovery level deemed appropriate by the board of directors up to 100 percent, under rules and procedures that shall be established by the commission.

(b) The rules and procedures for securitization established under Subsection (a) shall include rules and procedures for the recovery of stranded costs under the terms of a rate order adopted by the board of directors of the electric cooperative, which rate order shall have the effect of a financing order.

(c) The rules and procedures established by the commission under Subsection (b) shall include rules and procedures for the issuance of transition bonds issued in a securitized financing transaction. The issuance of any transition bonds issued in a securitized financing transaction by an electric cooperative is expressly authorized and shall be governed by the laws governing the issuance of bonds or other obligations by the electric cooperative. Findings made by the board of directors of an electric cooperative in a rate order issued under the rules and procedures described by this subsection shall be conclusive, and any transition charges incorporated in the rate order to recover the principal, interest, and all reasonable expenses associated with any securitized financing transaction shall constitute property rights, as described in Subchapter G, Chapter 39, and shall otherwise conform in all material respects to the transition charges provided by Subchapter G, Chapter 39.

Sec. 41.004. JURISDICTION OF COMMISSION. Except as specifically provided otherwise in this chapter, the commission has jurisdiction over electric cooperatives only as follows:

(1) to regulate wholesale transmission rates and service including terms of access, to the extent provided in Subchapter A, Chapter 35;

(2) to regulate certification to the extent provided in Chapter 37;

(3) to establish a code of conduct as provided in Section 39.157(e) subject to Section 41.054;

(4) to establish terms and conditions, but not rates, for open access to distribution facilities for electric cooperatives providing customer choice, as provided in Section 39.203; and

(5) to require reports of electric cooperative operations only to the extent necessary to:

(A) ensure the public safety;

(B) enable the commission to satisfy its responsibilities relating to electric cooperatives under this chapter;

(C) enable the commission to determine the aggregate electric load and energy requirements in the state and the resources available to serve that load; or

(D) enable the commission to determine information relating to market power as provided in Section 39.155.

Sec. 41.005. LIMITATION ON MUNICIPAL AUTHORITY. Notwithstanding any other provision of this title, a municipality may not directly or indirectly regulate the rates, operations, and services of an electric cooperative, except, with respect to operations, to the extent necessary to protect the public health, safety, or welfare. This section does not prohibit a municipality from making a lawful charge for the use of public rights-of-way within the municipality as provided by Section 182.025, Tax Code, and Section 33.008. An electric cooperative shall be an electric utility for purposes of Section 182.025, Tax Code, and Section 33.008.

[Sections 41.006-41.050 reserved for expansion]

SUBCHAPTER B. ELECTRIC COOPERATIVE UTILITY CHOICE

Sec. 41.051. BOARD DECISION. (a) The board of directors has the discretion to decide when or if the electric cooperative will provide customer choice.

(b) Electric cooperatives that choose to participate in customer choice may do so at any time on or after January 1, 2002, by adoption of an appropriate resolution of the board of directors. The decision to participate in customer choice by the adoption of a resolution may be revoked only if no customer has opted for choice within four years of the resolution's adoption. An electric cooperative may initiate a customer choice pilot project at any time.

Sec. 41.052. ELECTRIC COOPERATIVES NOT OFFERING CUSTOMER CHOICE. (a) An electric cooperative that chooses not to participate in customer choice may not offer electric energy at unregulated prices directly to retail customers outside its certificated retail service area.

(b) An electric cooperative under Subsection (a) retains the right to offer and provide a full range of customer service and pricing programs to the customers within its certificated retail service area and to purchase and sell electric energy at wholesale without geographic restriction.

(c) A generation and transmission electric cooperative may offer electric energy at unregulated prices directly to retail customers outside of its parent electric cooperatives' certificated service areas only if a majority of the parent electric cooperatives of the generation and transmission electric cooperative have chosen to offer customer choice.

(d) A subsidiary of an electric cooperative may not provide electric energy at unregulated prices outside of its parent electric cooperative's certificated retail service area unless the electric cooperative offers customer choice inside its certificated retail service area.

Sec. 41.053. RETAIL CUSTOMER RIGHT OF CHOICE. (a) If an electric cooperative chooses to participate in customer choice, after that choice, all retail customers within the certificated service area of the electric cooperative shall have the right of customer choice, and the electric cooperative shall provide nondiscriminatory open access for retail service.

(b) Notwithstanding Section 39.107, the metering function may not be deemed a competitive service for customers of the electric cooperative within that service area and may, at the option of the electric cooperative, continue to be offered by the electric cooperative as sole provider.

(c) On its initiation of customer choice, an electric cooperative shall designate itself or another entity as the provider of last resort for retail customers within the electric cooperative's certificated service area and shall fulfill the role of default provider of last resort in the event no other entity is available to act in that capacity.

(d) If a retail electric provider fails to serve a customer described in Subsection (c), on request by the customer, the provider of last resort shall offer the customer the standard retail service package for the appropriate customer class, with no interruption of service, at a fixed, nondiscountable rate that is at least sufficient to cover the reasonable costs of providing that service, as approved by the board of directors.

(e) The board of directors may establish the procedures and criteria for designating the provider of last resort and may redesignate the provider of last resort according to a schedule it considers appropriate.

Sec. 41.054. SERVICE OUTSIDE CERTIFICATED AREA. (a) Notwithstanding any provisions of Chapter 161:

(1) an electric cooperative participating in customer choice shall have the right to offer electric energy and related services at unregulated prices directly to retail customers who have customer choice without regard to geographic location; and

(2) any person, without restriction, except as may be provided in the electric cooperative's articles of incorporation and bylaws, may be a member of an electric cooperative.

(b) In providing service under Subsection (a) to retail customers outside its certificated service area as that area exists on the date of adoption of customer choice, an electric cooperative becomes subject to commission jurisdiction as to the commission's rules establishing a code of conduct regulating anticompetitive practices under Section 39.157(e), except to the extent those rules conflict with this chapter.

(c) For electric cooperatives participating in customer choice, the commission shall have jurisdiction to establish terms and conditions, but not rates, for access by other electric providers to the electric cooperative's distribution facilities.

(d) Notwithstanding Subsections (b) and (c), the commission shall make accommodation in the code of conduct for specific legal requirements imposed by state or federal law applicable to electric cooperatives. The commission shall accommodate the organizational structures of electric cooperatives and may not prohibit an electric cooperative and any related entity from sharing officers, directors, or employees.

(e) The commission does not have jurisdiction to require the unbundling of services or functions of, or to regulate the recovery of stranded investment of, an electric cooperative or, except as provided by this section, jurisdiction with respect to the rates, terms, and conditions of service for retail customers of an electric cooperative within the electric cooperative's certificated service area.

(f) An electric cooperative shall maintain separate books and records of its operations and the operations of any subsidiary and shall ensure that the rates charged for provision of electric service do not include any costs of its subsidiary or any other costs not related to the provision of electric service.

Sec. 41.055. JURISDICTION OF BOARD OF DIRECTORS. A board of directors has exclusive jurisdiction to:

(1) set all terms of access, conditions, and rates applicable to services provided by the electric cooperative, except as provided by Sections 41.054 and 41.056, including nondiscriminatory and comparable rates for distribution but excluding wholesale transmission rates, terms of access, and conditions for wholesale transmission service set by the commission under Subchapter A, Chapter 35, provided that the rates for distribution established by the electric cooperative shall be comparable to the distribution rates that apply to the electric cooperative and its subsidiaries;

(2) determine whether to unbundle any energy-related activities and, if the board of directors chooses to unbundle, whether to do so structurally or functionally;

(3) reasonably determine the amount of the electric cooperative's stranded investment;

(4) establish nondiscriminatory transition charges reasonably designed to recover the stranded investment over an appropriate period of time;

(5) determine the extent to which the electric cooperative will provide various customer services, including nonelectric services, or accept the services from other providers;

(6) manage and operate the electric cooperative's utility systems, including exercise of control over resource acquisition and any related expansion programs;

(7) establish and enforce service quality standards, reliability standards, and consumer safeguards designed to protect retail electric customers;

(8) determine whether a base rate reduction is appropriate for the electric cooperative;

(9) determine any other utility matters that the board of directors believes should be included;

(10) sell electric energy and capacity at wholesale, regardless of whether the electric cooperative participates in customer choice; and

(11) make any other decisions affecting the electric cooperative's method of conducting business that are not inconsistent with the provisions of this chapter.

Sec. 41.056. ANTICOMPETITIVE ACTIONS. (a) If, after notice and hearing, the commission finds that an electric cooperative providing customer choice has engaged in anticompetitive behavior by not providing other retail electric providers with nondiscriminatory terms and conditions of access to distribution facilities or customers within the electric cooperative's certificated service area that are comparable to the electric cooperative's and its subsidiaries' terms and conditions of access to distribution facilities or customers, the commission shall notify the electric cooperative.

(b) The electric cooperative shall have three months to cure the anticompetitive or noncompliant behavior described in Subsection (a). If the behavior is not fully remedied within that time, the commission may prohibit the electric cooperative or its subsidiary from providing retail service outside its certificated retail service area until the behavior is remedied.

Sec. 41.057. BILLING. (a) An electric cooperative that opts for customer choice may continue to bill directly electric customers located in its certificated service area for all transmission and distribution services. The electric cooperative may also bill directly for generation and customer services provided by the electric cooperative or its subsidiaries to those customers.

(b) A customer served by an electric cooperative for transmission and distribution services and by a retail electric provider for retail service has the option of being billed directly by each service provider or receiving a single bill for distribution, transmission, and generation services from the electric cooperative.

Sec. 41.058. TARIFFS FOR OPEN ACCESS. An electric cooperative that owns or operates transmission and distribution facilities shall file tariffs implementing the open access rules established by the commission under Section 39.203 with the appropriate regulatory authorities having jurisdiction over the transmission and distribution service of the electric cooperative before the 90th day preceding the date the electric cooperative offers customer choice.

Sec. 41.059. NO POWER TO AMEND CERTIFICATES. Nothing in this chapter empowers a board of directors to issue, amend, or rescind a certificate of public convenience and necessity granted by the commission.

Sec. 41.060. CUSTOMER SERVICE INFORMATION. (a) The commission shall keep information submitted by customers and retail electric providers pertaining to the provision of electric service by electric cooperatives.

(b) The commission shall notify the appropriate electric cooperative of information submitted by a customer or retail electric provider, and the electric

cooperative shall respond to the customer or retail electric provider. The electric cooperative shall notify the commission of its response.

(c) The commission shall prepare a report for the Sunset Advisory Commission that includes information submitted and responses by electric cooperatives in accordance with the Sunset Advisory Commission's schedule for reviewing the commission.

Sec. 41.061. RETAIL RATE CHANGES BY ELECTRIC COOPERATIVES. (a) This section shall apply to retail rates of an electric cooperative that has not adopted customer choice and to the retail delivery rates of an electric cooperative that has adopted customer choice. This section may not apply to rates for:

(1) sales of electric energy by an electric cooperative that has adopted customer choice; or

(2) wholesale sales of electric energy.

(b) An electric cooperative may change its rates by:

(1) adopting a resolution approving the proposed change;

(2) mailing notice of the proposed change to each affected customer whose rate would be increased by the proposed change at least 30 days before implementation of the proposed change, which notice may be included in a monthly billing; and

(3) holding a meeting to discuss the proposed rate changes with affected customers, if any change is expected to increase total system annual revenues by more than $100,000 or one percent, whichever is greater.

(c) An electric cooperative may implement the proposed rates on completion of the requirements under Subsection (b), and those rates shall remain in effect until changed by the electric cooperative as provided by this section or, for rates other than retail delivery rates, until this section is no longer applicable because the electric cooperative adopts customer choice.

(d) The electric cooperative may reconsider a rate change at any time and adjust the rate by board resolution without additional notice or meeting of customers if the rate as adjusted is not expected to increase the revenues from a customer class. However, if notice is given to a customer class that would receive an increase as a result of the adjustment, then the rates for the customer class may be increased without additional meeting of the customers. A customer may petition to appeal within the time provided in Subsection (f).

(e) Retail rates set by an electric cooperative that has not adopted customer choice and retail delivery rates set by an electric cooperative that has adopted customer choice shall be just and reasonable, not unreasonably preferential, prejudicial, or discriminatory; provided, however, if the customer agrees, an electric cooperative may charge a market-based rate to customers who have energy supply options if rates are not increased for other customers as a result.

(f) A customer of the electric cooperative who is adversely affected by a rate setting resolution of the electric cooperative is entitled to judicial review. A person initiates judicial review by filing a petition in the district court of Travis County not later than the 90th day after the resolution is implemented.

(g) The resolution of the electric cooperative setting rates, as it may have been amended as described in Subsection (d), shall be presumed valid, and the burden of showing that the resolution is invalid rests on the persons challenging the resolution. A court reviewing a change of a rate or rates by an electric cooperative may consider any relevant factor including the cost of providing service.

(h) If the court finds that the electric cooperative's resolution setting rates violates the standards contained in Subsection (e), or that the electric cooperative's rate violates Subsection (e) the court shall enter an order:

(1) stating the specific basis for its determination that the rates set in the electric cooperative's resolution violate Subsection (e); and

(2) directing the electric cooperative to:

(A) set, within 60 days, revised retail rates that do not violate the standards of Subsection (e); and

(B) refund or credit against future bills, at the electric cooperative's option, revenues collected under the rate found to violate the standards of Subsection (e) that exceed the revenues that would have been collected under the revised rates. The refund or credit shall be made over a period of not more than 12 months, as determined by the court.

(i) The court may not enter an order delaying or prohibiting implementation of a rate change or set revised rates either for the period the challenged resolution was in effect or prospectively.

(j) A person having obtained an order of the court requiring an electric cooperative to set revised retail rates pursuant to Subsection (h)(2)(A) may, once the order is no longer subject to appeal, initiate an original proceeding in the district court of Travis County either to:

(1) seek enforcement of the court's order by writ of mandamus if the electric cooperative has failed to adopt a resolution approving revised rates within the time prescribed; or

(2) seek judicial review of the electric cooperative's most current resolution setting rates as provided in this section, if the electric cooperative has set revised rates pursuant to the order of the court within the time prescribed. In the event of such enforcement proceeding or judicial review the court may, in addition to the other remedies provided for in this section, award reasonable costs, including reasonable attorney's fees, to the party prevailing on the case as a whole. Additionally, if the court finds that either party has acted in bad faith solely for the purpose of perpetuating the rate dispute between the parties, the court may impose sanctions on the offending party in accordance with the provisions of Subsections (b), (c), and (e), Section 10.004, Civil Practice and Remedies Code.

(k) An electric cooperative that has not adopted customer choice and that has not changed each of its nonresidential rates since January 1, 1999, shall, on or before May 1, 2002, adopt a resolution setting rates. The resolution shall be subject to judicial review as provided in this section whether or not any rate is changed. In the event the electric cooperative fails to adopt a resolution setting rates pursuant to this subsection, a customer may petition for judicial review of the electric cooperative's rates. A person initiates judicial review by filing a petition in the district court of Travis County not later than November 1, 2002.

Sec. 41.062. ALLOCATION OF STRANDED INVESTMENT. Any competition transition charge shall be allocated among retail customer classes based on the relevant customer class characteristics as of the end of the electric cooperative's most recent fiscal year before implementation of customer choice, in accordance with the methodology used to allocate the costs of the underlying assets or expenses in the electric cooperative's most recent cost of service study certified by a professional engineer or certified public accountant or approved by the commission. In multiply

certificated areas, a retail customer may not avoid stranded cost recovery charges by switching to another electric cooperative, an electric utility, or a municipally owned utility.

Sec. 41.063. RETAIL RATES OF SUCCESSOR ELECTRIC UTILITY TO ELECTRIC COOPERATIVE. (a) For purposes of this section, an electric cooperative as described by Section 11.003(9)(C) is a "successor cooperative" and the rates of a successor cooperative are subject to this section. Effective January 1, 2000, a customer of a successor cooperative who has reason to believe the customer is being charged a rate in violation of Subsection (b) is entitled to judicial review by filing a petition in a district court of Travis County. The customer has the burden of proving the rate violates Subsection (b).

(b) Retail rates of a successor cooperative shall be just and reasonable and not unreasonably preferential, prejudicial, or discriminatory. However, a successor cooperative may charge a lower, market-based rate to customers who have energy supply options, and in that event the standards that would otherwise govern the rates charged to other customers are modified only to the minimum extent necessary to enable those customers having energy supply options to receive lower, market-based rates.

(c) A court reviewing a rate by a successor cooperative may consider any relevant factor that may be considered by a court in reviewing a decision of the commission, including the cost of providing service.

(d) If the court finds that the successor cooperative's rate violates the standards contained in Subsection (b), the court shall enter an order:

(1) stating the specific basis for its determination that the rate violates Subsection (b); and

(2) directing the successor cooperative to:

(A) set, within 60 days, a revised retail rate that does not violate the standards of Subsection (b); and

(B) refund or credit against future bills, at the successor cooperative's option, revenues collected under the rate found to violate the standards of Subsection (b) that exceed the revenues that would have been collected under the revised rates.

(e) The refund or credit shall be made over a period of not more than 12 months, as determined by the electric cooperative. If the court has ordered relief under Subsection (d), and after 60 days the court finds that the successor cooperative's resolution setting rates still violates the standards contained in Subsection (b), the court shall enter an order imposing any sanction authorized by Section 10.004(c), Civil Practice and Remedies Code.

(f) No remedy other than or additional to a remedy under Subsections (d) and (e) may be ordered by the court. The court may not set revised rates either for the period the challenged resolution was in effect or prospectively.

Sec. 41.064. UNAUTHORIZED RETAIL ACCESS TO DISTRIBUTION FACILITIES. An electric cooperative that has not adopted customer choice may not be required to provide access over its facilities for service to its retail customers in its certificated service area.

[Sections 41.065-41.100 reserved for expansion]

SUBCHAPTER C. RIGHTS NOT AFFECTED

Sec. 41.101. INTERFERENCE WITH CONTRACT. (a) This subtitle may not interfere with or abrogate the rights or obligations of parties, including a retail or wholesale customer, to a contract with an electric cooperative or its subsidiary.

(b) No provision of this subtitle may interfere with or be deemed to abrogate the rights or obligations of a party under a contract or an agreement concerning certificated service areas.

Sec. 41.102. ACCESS TO WHOLESALE MARKET. Nothing in this subtitle shall limit the access of an electric cooperative or its subsidiary, either on its own behalf or on behalf of its customers, to the wholesale electric market.

Sec. 41.103. PROTECTION OF BONDHOLDERS. Nothing in this subtitle or any rule adopted under this subtitle shall impair contracts, covenants, or obligations between an electric cooperative and its lenders and holders of bonds issued on behalf of or by the electric cooperative.

Sec. 41.104. TAX-EXEMPT STATUS. Nothing in this subtitle may impair the tax-exempt status of electric cooperatives, nor shall anything in this subtitle compel any electric cooperative to use its facilities in a manner that violates any contractual provisions, bond covenants, or other restrictions applicable to facilities financed by tax-exempt or federally insured or guaranteed debt.

SECTION 41. Section 252.022, Local Government Code, is amended by amending Subsection (a) and by adding Subsection (c) to read as follows:

(a) This chapter does not apply to an expenditure for:

(1) a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality;

(2) a procurement necessary to preserve or protect the public health or safety of the municipality's residents;

(3) a procurement necessary because of unforeseen damage to public machinery, equipment, or other property;

(4) a procurement for personal, professional, or planning services;

(5) a procurement for work that is performed and paid for by the day as the work progresses;

(6) a purchase of land or a right-of-way;

(7) a procurement of items that are available from only one source, including:

(A) items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies;

(B) films, manuscripts, or books;

(C) [~~electricity,~~] gas, water, and other utility services;

(D) captive replacement parts or components for equipment;

(E) books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and

(F) management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits;

(8) a purchase of rare books, papers, and other library materials for a public library;

(9) paving drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements;

(10) a public improvement project, already in progress, authorized by the voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes authorized by the voters;

(11) a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212;

(12) personal property sold:

(A) at an auction by a state licensed auctioneer;

(B) at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code;

(C) by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or

(D) under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391;

(13) services performed by blind or severely disabled persons; [~~or~~]

(14) goods purchased by a municipality for subsequent retail sale by the municipality; or

(15) electricity.

(c) This chapter does not apply to expenditures by a municipally owned electric or gas utility or unbundled divisions of a municipally owned electric or gas utility in connection with any purchases by the municipally owned utility or divisions of a municipally owned utility made in accordance with procurement procedures adopted by a resolution of the body vested with authority for management and operation of the municipally owned utility or its divisions that sets out the public purpose to be achieved by those procedures. This subsection may not be deemed to exempt a municipally owned utility from any other applicable statute, charter provision, or ordinance.

SECTION 42. Subtitle C, Title 9, Local Government Code, is amended by adding Chapter 303 to read as follows:

CHAPTER 303. ENERGY AGGREGATION MEASURES FOR LOCAL GOVERNMENTS

Sec. 303.001. AGGREGATION BY POLITICAL SUBDIVISIONS. (a) In this chapter, "political subdivision" means a county, municipality, hospital district, or any other political subdivision.

(b) A political subdivision may join with another political subdivision or subdivisions to form a political subdivision corporation or corporations to act as an agent to negotiate the purchase of electricity, or to likewise aid or act on behalf of the political subdivisions for which the corporation is created, with respect to their own electricity use for their respective public facilities.

(c) The articles of incorporation and the bylaws of a political subdivision corporation must be approved by ordinance, resolution, or order adopted by the governing body of each political subdivision for which the corporation is created.

(d) A political subdivision corporation may negotiate on behalf of its incorporating political subdivisions for the purchase of electricity, make contracts for the purchase of electricity, purchase electricity, and take any other action necessary to purchase electricity for use in the public facilities of the political subdivision or subdivisions represented by the political subdivision corporation. In this subsection, "electricity" means electric energy, capacity, energy services, ancillary services, or other electric services for retail or wholesale consumption by the political subdivisions.

(e) A political subdivision corporation may recover the expenses of the political subdivision corporation through the assessment of dues to the incorporating political

subdivisions or through an aggregation fee charged per kilowatt hour, or a combination of both.

(f) A political subdivision corporation may appear on behalf of its incorporating political subdivisions before the Public Utility Commission of Texas, the Railroad Commission of Texas, the Texas Natural Resource Conservation Commission, any other governmental agency or regulatory authority, the Texas Legislature, and the courts.

(g) A political subdivision corporation has the powers of a corporation created and incorporated pursuant to the provisions of the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) and such other powers as specified in Section 39.3545, Utilities Code.

(h) The provisions of the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) relating to powers, standards of conduct, and interests in contracts apply to the directors and officers of a political subdivision corporation.

(i) A member of the board of directors of a political subdivision corporation:

(1) is not a public official by virtue of that position; and

(2) unless otherwise ineligible, may be elected to serve as an official of a political subdivision or be employed by a political subdivision.

Sec. 303.002. AGGREGATION BY POLITICAL SUBDIVISION FOR CITIZENS. (a) A political subdivision aggregator may negotiate for the purchase of electricity and energy services on behalf of the citizens of the political subdivision. The citizens must affirmatively request to be included in the aggregation services by the political subdivision aggregator.

(b) A political subdivision may contract with a third party or another aggregator to administer the aggregation of electricity and energy services purchased under Subsection (a).

(c) The political subdivision aggregator may use any mailing from the subdivision to invite participation by its citizens.

SECTION 43. Section 272.001, Local Government Code, is amended by adding Subsection (j) to read as follows:

(j) This section does not apply to sales or exchanges of land owned by a municipality operating a municipally owned electric or gas utility if the land is held or managed by the municipally owned utility, or by a division of the municipally owned electric or gas utility that constitutes the unbundled electric or gas operations of the utility, provided that the governing body of the municipally owned utility shall adopt a resolution stating the conditions and circumstances for the sale or exchange and the public purpose that will be achieved by the sale or exchange. For purposes of this subsection, "municipally owned utility" includes a river authority engaged in the generation, transmission, or distribution of electric energy to the public, and "unbundled" operations are those operations of the utility that have, in the discretion of the utility's governing body, been functionally separated.

SECTION 44. Subsection (c), Section 402.002, Local Government Code, is amended to read as follows:

(c) The municipality may manufacture its own electricity, gas, or anything else needed or used by the public. It may purchase, and make contracts for the purchase of, gas, electricity, oil, or any other commodity or article used by the public and may sell it to the public on terms as provided by the municipal charter, ordinance, or resolution of the governing body of the municipally owned utility.

SECTION 45. Subchapter D, Chapter 551, Government Code, is amended by adding Section 551.086 to read as follows:

Sec. 551.086. CERTAIN PUBLIC POWER UTILITIES: COMPETITIVE MATTERS. (a) Notwithstanding anything in this chapter to the contrary, the rules provided by this section apply to competitive matters of a public power utility.

(b) In this section:

(1) "Public power utility" means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

(2) "Public power utility governing body" means the board of trustees or other applicable governing body, including a city council, of a public power utility.

(3) "Competitive matter" means a utility-related matter that the public power utility governing body in good faith determines by a vote under this section is related to the public power utility's competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors, but may not be deemed to include the following categories of information:

(A) information relating to the provision of distribution access service, including the terms and conditions of the service and the rates charged for the service but not including information concerning utility-related services or products that are competitive;

(B) information relating to the provision of transmission service that is required to be filed with the Public Utility Commission of Texas, subject to any confidentiality provided for under the rules of the commission;

(C) information for the distribution system pertaining to reliability and continuity of service, to the extent not security-sensitive, that relates to emergency management, identification of critical loads such as hospitals and police, records of interruption, and distribution feeder standards;

(D) any substantive rule of general applicability regarding service offerings, service regulation, customer protections, or customer service adopted by the public power utility as authorized by law;

(E) aggregate information reflecting receipts or expenditures of funds of the public power utility, of the type that would be included in audited financial statements;

(F) information relating to equal employment opportunities for minority groups, as filed with local, state, or federal agencies;

(G) information relating to the public power utility's performance in contracting with minority business entities;

(H) information relating to nuclear decommissioning trust agreements, of the type required to be included in audited financial statements;

(I) information relating to the amount and timing of any transfer to an owning city's general fund;

(J) information relating to environmental compliance as required to be filed with any local, state, or national environmental authority, subject to any confidentiality provided under the rules of those authorities;

(K) names of public officers of the public power utility and the voting records of those officers for all matters other than those within the scope of a competitive resolution provided for by this section;

(L) a description of the public power utility's central and field organization, including the established places at which the public may obtain

information, submit information and requests, or obtain decisions and the identification of employees from whom the public may obtain information, submit information or requests, or obtain decisions; or

(M) information identifying the general course and method by which the public power utility's functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures.

(c) This chapter does not require a public power utility governing body to conduct an open meeting to deliberate, vote, or take final action on any competitive matter, as that term is defined in Subsection (b)(3). Before a public power utility governing body may deliberate, vote, or take final action on any competitive matter in a closed meeting, the public power utility governing body must first make a good faith determination, by majority vote of its members, that the matter is a competitive matter that satisfies the requirements of Subsection (b)(3). The vote shall be taken during the closed meeting and be included in the certified agenda or tape recording of the closed meeting. If a public power utility governing body fails to determine by that vote that the matter satisfies the requirements of Subsection (b)(3), the public power utility governing body may not deliberate or take any further action on the matter in the closed meeting. This section does not limit the right of a public power utility governing body to hold a closed session under any other exception provided for in this chapter.

(d) For purposes of Section 551.041, the notice of the subject matter of an item that may be considered as a competitive matter under this section is required to contain no more than a general representation of the subject matter to be considered, such that the competitive activity of the public power utility with respect to the issue in question is not compromised or disclosed.

(e) With respect to municipally owned utilities subject to this section, this section shall apply whether or not the municipally owned utility has adopted customer choice or serves in a multiply certificated service area under the Utilities Code.

(f) Nothing in this section is intended to preclude the application of the enforcement and remedies provisions of Subchapter G.

SECTION 46. Subchapter C, Chapter 552, Government Code, is amended by adding Section 552.131 to read as follows:

Sec. 552.131. EXCEPTION: PUBLIC POWER UTILITY COMPETITIVE MATTERS. (a) In this section:

(1) "Public power utility" means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

(2) "Public power utility governing body" means the board of trustees or other applicable governing body, including a city council, of a public power utility.

(3) "Competitive matter" means a utility-related matter that the public power utility governing body in good faith determines by a vote under this section is related to the public power utility's competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors, but may not be deemed to include the following categories of information:

(A) information relating to the provision of distribution access service, including the terms and conditions of the service and the rates charged for the service but not including information concerning utility-related services or products that are competitive;

(B) information relating to the provision of transmission service that is required to be filed with the Public Utility Commission of Texas, subject to any confidentiality provided for under the rules of the commission;

(C) information for the distribution system pertaining to reliability and continuity of service, to the extent not security-sensitive, that relates to emergency management, identification of critical loads such as hospitals and police, records of interruption, and distribution feeder standards;

(D) any substantive rule of general applicability regarding service offerings, service regulation, customer protections, or customer service adopted by the public power utility as authorized by law;

(E) aggregate information reflecting receipts or expenditures of funds of the public power utility, of the type that would be included in audited financial statements;

(F) information relating to equal employment opportunities for minority groups, as filed with local, state, or federal agencies;

(G) information relating to the public power utility's performance in contracting with minority business entities;

(H) information relating to nuclear decommissioning trust agreements, of the type required to be included in audited financial statements;

(I) information relating to the amount and timing of any transfer to an owning city's general fund;

(J) information relating to environmental compliance as required to be filed with any local, state, or national environmental authority, subject to any confidentiality provided under the rules of those authorities;

(K) names of public officers of the public power utility and the voting records of those officers for all matters other than those within the scope of a competitive resolution provided for by this section;

(L) a description of the public power utility's central and field organization, including the established places at which the public may obtain information, submit information and requests, or obtain decisions and the identification of employees from whom the public may obtain information, submit information or requests, or obtain decisions; or

(M) information identifying the general course and method by which the public power utility's functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures.

(b) Information or records are excepted from the requirements of Section 552.021 if the information or records are reasonably related to a competitive matter, as defined in this section. Excepted information or records include the text of any resolution of the public power utility governing body determining which issues, activities, or matters constitute competitive matters. Information or records of a municipally owned utility that are reasonably related to a competitive matter are not subject to disclosure under this chapter, whether or not, under the Utilities Code, the municipally owned utility has adopted customer choice or serves in a multiply certificated service area. This section does not limit the right of a public power utility governing body to withhold from disclosure information deemed to be within the scope of any other exception provided for in this chapter, subject to the provisions of this chapter.

(c) In connection with any request for an opinion of the attorney general under Section 552.301 with respect to information alleged to fall under this exception, in rendering a written opinion under Section 552.306 the attorney general shall find the requested information to be outside the scope of this exception only if the attorney general determines, based on the information provided in connection with the request:

(1) that the public power utility governing body has failed to act in good faith in making the determination that the issue, matter, or activity in question is a competitive matter; or

(2) that the information or records sought to be withheld are not reasonably related to a competitive matter.

SECTION 47. Subsection (d), Section 791.011, Government Code, is amended to read as follows:

(d) An interlocal contract must:

(1) be authorized by the governing body of each party to the contract unless a party to the contract is a municipally owned electric utility, in which event the governing body may establish procedures for entering into interlocal contracts that do not exceed $100,000 without requiring the approval of the governing body;

(2) state the purpose, terms, rights, and duties of the contracting parties; and

(3) specify that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

SECTION 48. Subchapter A, Chapter 2256, Government Code, is amended by adding Section 2256.0201 to read as follows:

Sec. 2256.0201. AUTHORIZED INVESTMENTS; MUNICIPAL UTILITY. (a) A municipality that owns a municipal electric utility that is engaged in the distribution and sale of electric energy or natural gas to the public may enter into a hedging contract and related security and insurance agreements in relation to fuel oil, natural gas, and electric energy to protect against loss due to price fluctuations. A hedging transaction must comply with the regulations of the Commodity Futures Trading Commission and the Securities and Exchange Commission. If there is a conflict between the municipal charter of the municipality and this chapter, this chapter prevails.

(b) A payment by a municipally owned electric or gas utility under a hedging contract or related agreement in relation to fuel supplies or fuel reserves is a fuel expense, and the utility may credit any amounts it receives under the contract or agreement against fuel expenses.

(c) The governing body of a municipally owned electric or gas utility or the body vested with power to manage and operate the municipally owned electric or gas utility may set policy regarding hedging transactions.

(d) In this section, "hedging" means the buying and selling of fuel oil, natural gas, and electric energy futures or options or similar contracts on those commodity futures as a protection against loss due to price fluctuation.

SECTION 49. Subsections (a), (c), and (d), Section 52.133, Natural Resources Code, are amended to read as follows:

(a) Each oil or gas lease covering land leased by the board, by a board for lease [~~other than the Board for Lease of University Lands~~], or by the surface owner of land under which the state owns the minerals, commonly referred to as Relinquishment Act land, which shall be subject to approval by the commissioner before it is effective,

shall include a provision granting the board authorized to lease the land or the owner of the soil of Relinquishment Act land and the commissioner authority to take their royalty in kind, and the commissioner and the boards for lease may include any other reasonable provisions that are not inconsistent with this section.

(c) The commissioner, the owner of the soil under Subchapter F [~~of this chapter~~], or the commissioner[~~,~~] acting on the behalf of and at the direction of an owner of the soil under Subchapter F [~~of this chapter~~], the board, or a board for lease, or at the direction of the Board for Lease of University Lands, may negotiate and execute contracts or any other instruments or agreements necessary to dispose of or enhance their portion of the royalty taken in kind, including contracts for sale, purchase, transportation, and storage and including insurance contracts or other agreements, to secure or guarantee payment.

(d) The commissioner, the owner of the soil under Subchapter F, or the commissioner acting on behalf of and at the direction of an owner of the soil under Subchapter F, the board, or a board for lease, may negotiate and execute contracts or any other instruments or agreements necessary to convert that portion of the royalty taken in kind into other forms of energy, including electricity. [~~This section does not apply to or have any effect on the Board for Lease of University Lands or any lease executed on university land.~~]

SECTION 50. Section 53.026, Natural Resources Code, is amended to read as follows:

Sec. 53.026. IN KIND ROYALTY. (a) The commissioner or the commissioner acting on behalf of and at the direction of the board or a board for lease may negotiate and execute a contract or any other instrument or agreement necessary to dispose of or enhance their portion of the royalty taken in kind, including contracts [~~a contract~~] for sale, purchase, transportation, or storage.

(b) The commissioner or the commissioner acting on behalf of and at the direction of the board or a board for lease may negotiate and execute a contract or any other instrument or agreement necessary to convert that portion of the royalty taken in kind to other forms of energy, including electricity.

(c) This section shall not be construed to surrender or in any way affect the right of the state under an existing or future lease to receive monetary royalty from its lessee.

SECTION 51. Section 53.077, Natural Resources Code, is amended to read as follows:

Sec. 53.077. IN KIND ROYALTY. (a) The commissioner, each owner of the soil under this subchapter, or the commissioner acting on the behalf of and at the direction of an owner of the soil under this subchapter may negotiate and execute a contract or any other instrument or agreement necessary to dispose of or enhance their portion of the royalty taken in kind, including a contract for sale, transportation, or storage.

(b) The commissioner, each owner of the soil under this subchapter, or the commissioner acting on behalf of and at the direction of the owner of the soil under this subchapter may negotiate and execute a contract or any other instrument or agreement necessary to convert that portion of the royalty taken in kind to other forms of energy, including electricity.

(c) This section shall not be construed to surrender or in any way affect the right of the state or the owner of the soil under an existing or future lease to receive monetary royalty from its lessee.

SECTION 52. Chapter 245, Acts of the 67th Legislature, Regular Session, 1981 (Article 717p, Vernon's Texas Civil Statutes), is amended by adding Section 4C to read as follows:

Sec. 4C. (a) This section applies only to a river authority that is engaged in the distribution and sale of electric energy to the public.

(b) Notwithstanding any other law, a river authority may:

(1) provide transmission services, as defined by the Utilities Code or the Public Utility Commission of Texas, on a regional basis to any eligible transmission customer at any location within or outside the boundaries of the river authority; and

(2) acquire, including by lease-purchase, lease from or to any person, finance, construct, rebuild, operate, or sell electric transmission facilities at any location within or outside the boundaries of the river authority; provided, however, that nothing in this section shall:

(A) allow a river authority to construct transmission facilities to an ultimate consumer of electricity to enable an ultimate consumer to bypass the transmission or distribution facilities of its existing provider; or

(B) relieve a river authority from an obligation to comply with the provisions of the Utilities Code concerning a certificate of convenience and necessity for a transmission facility.

SECTION 53. Sections 1 and 2, Article 1115a, Revised Statutes, are amended to read as follows:

Sec. 1. This article applies only to a home-rule municipality that owns an electric utility system, that by ordinance or charter elects to have the management and control of the system governed by a board of trustees [~~this article~~], and that:

(1) has outstanding obligations payable in whole or part [~~solely~~] from and secured by a lien on and pledge of net revenues of the system; or

(2) issues obligations that are payable in whole or part [~~solely~~] from and secured by a lien on and pledge of the net revenues of the system and that are approved by the attorney general.

Sec. 2. A municipality by ordinance may transfer management and control of the electric utility system to a [~~five-member~~] board of trustees appointed by the municipality's governing body. The municipality by ordinance shall determine [~~set~~] the qualifications for appointment to the board and the number of members. The municipality may by ordinance vest the power to establish rates and related terms and conditions for its municipally owned electric utility in the board of trustees appointed under this section.

SECTION 54. Subsection (a), Section 151.0101, Tax Code, is amended to read as follows:

(a) "Taxable services" means:

(1) amusement services;

(2) cable television services;

(3) personal services;

(4) motor vehicle parking and storage services;

(5) the repair, remodeling, maintenance, and restoration of tangible personal property, except:

(A) aircraft;

(B) a ship, boat, or other vessel, other than:

(i) a taxable boat or motor as defined by Section 160.001;

(ii) a sports fishing boat; or

(iii) any other vessel used for pleasure;

(C) the repair, maintenance, and restoration of a motor vehicle; and

(D) the repair, maintenance, creation, and restoration of a computer program, including its development and modification, not sold by the person performing the repair, maintenance, creation, or restoration service;

(6) telecommunications services;

(7) credit reporting services;

(8) debt collection services;

(9) insurance services;

(10) information services;

(11) real property services;

(12) data processing services;

(13) real property repair and remodeling;

(14) security services; [~~and~~]

(15) telephone answering services; and

(16) a sale by a transmission and distribution utility, as defined in Section 31.002, Utilities Code, of transmission or delivery of service directly to an electricity end-use customer whose consumption of electricity is subject to taxation under this chapter.

SECTION 55. Subdivision (1), Section 182.021, Tax Code, is amended to read as follows:

(1) "Utility company" means a person:

(A) who owns or operates a gas[~~, electric light, electric power,~~] or water works, or water [~~and light~~] plant used for local sale and distribution located within an incorporated city or town in this state; or

(B) who owns or operates an electric light or electric power works, or light plant used for local sale and distribution located within an incorporated city or town in this state, or who is a retail electric provider, as that term is defined in Section 31.002, Utilities Code, that makes local sales within an incorporated city or town in this state; provided, however, that a person who owns an electric light or electric power or gas plant used for distribution but who does not make retail sales to the ultimate consumer within an incorporated city or town in this state is not included in this definition.

SECTION 56. Effective January 1, 2002, Section 182.025, Tax Code, is amended to read as follows:

Sec. 182.025. CHARGES BY A CITY. (a) An incorporated city or town may make a reasonable lawful charge for the use of a city street, alley, or public way by a public utility in the course of its business.

(b) The total charges, however designated or measured, may not exceed two percent of the gross receipts of the public utility for the sale of gas[~~, electric energy,~~] or water within the city.

(c) The total charges, however designated or measured, relating to distribution service of an electric utility or transmission and distribution utility within the city may not exceed the amount or amounts prescribed by Section 33.008, Utilities Code. The charges paid by an electric utility or transmission and distribution utility under this subsection may be only for distribution service.

(d) If a public utility taxed under this subchapter pays a special tax, rental, contribution, or charge under a contract or franchise executed before May 1, 1941, the city shall credit the payment against the amount owed by the public utility on any charge allowable under Subsection (a) of this section.

(e) In this section:

(1) "Distribution service" has the meaning assigned by Section 33.008, Utilities Code.

(2) "Electric utility" has the meaning assigned by Section 31.002, Utilities Code.

(3) "Public utility" means:

(A) a person who owns or operates a gas or water works or water plant used for local sale and distribution located within an incorporated city or town in this state; or

(B) an electric utility or transmission and distribution utility providing distribution service within an incorporated city or town in this state.

(4) "Transmission and distribution utility" has the meaning assigned by Section 31.002, Utilities Code.

SECTION 57. Subchapter B, Chapter 182, Tax Code, is amended by adding Section 182.027 to read as follows:

Sec. 182.027. NO EXEMPTION. Notwithstanding anything to the contrary in Chapter 161, Utilities Code, this subchapter applies to a retail electric provider as defined in Section 31.002(17), Utilities Code, that is owned, operated, or controlled by an electric cooperative.

SECTION 58. Subchapter E, Chapter 191, Tax Code, is amended by adding Section 191.0825 to read as follows:

Sec. 191.0825. REFUND OR CREDIT. (a) A person subject to the tax imposed by this subchapter is entitled to a refund of the tax imposed by this subchapter if:

(1) the person performs taxable services on a gas well that was drilled after January 1, 2000; and

(2) the well produced gas that was primarily used as a fuel to generate electricity.

(b) The comptroller may provide for a person subject to the tax imposed by this subchapter to claim a credit against the tax imposed by this subchapter instead of claiming a refund.

SECTION 59. Subchapter B, Chapter 201, Tax Code, is amended by adding Section 201.059, Tax Code, to read as follows:

Sec. 201.059. REFUND OR CREDIT OF TAX. (a) Natural gas produced from a gas well drilled after January 1, 2000, is exempt from the taxes imposed by this chapter if the gas produced from the well is primarily used as a fuel to generate electricity.

(b) The tax must be paid when due at the rate provided by Section 201.052 for all gas exempt under this section. The person responsible for paying the tax may apply to the comptroller for a refund of the gas that is eligible for the tax exemption and is entitled to receive a refund.

(c) The comptroller may provide for a person responsible for paying the tax imposed by this chapter to claim a credit against the taxes imposed by this chapter instead of claiming a refund.

SECTION 60. The Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes) is amended by adding Section 9E to read as follows:

Sec. 9E. FINANCING OF STRANDED COSTS. (a) The authority shall, either directly or by means of a trust or trusts established by it, have the power to issue bonds, notes, certificates of participation, or other obligations or evidences of indebtedness

("indebtedness") for the purpose of financing stranded costs of a municipal power agency created by concurrent resolution by its member cities on or before August 1, 1975, pursuant to Chapter 163, Utilities Code, or a predecessor statute to that chapter. The stranded costs of the municipal power agency are set forth as allocated to the member cities in the "Potentially Strandable Investment (ECOM) Report: 1998 Update" issued by the Public Utility Commission of Texas.

(b) At the request of any member city of a municipal power agency, which shall include a statement of the payment terms for recovering stranded costs, the authority shall issue indebtedness in the amount of the requesting member city's stranded costs, plus the costs described in Subdivision (1) along with issuance costs and shall make a grant of the proceeds of such indebtedness to the municipal power agency, subject to conditions that:

(1) the municipal power agency shall use such grant to reduce the outstanding principal of the agency's debts allocable to stranded costs of the requesting member city for federal income tax purposes, whether by redemption, defeasance, or tender offer, together with any interest expenses, call premium, tender premium, or administrative expenses associated with such principal payment; and

(2) the municipal power agency shall reduce the amount payable by the requesting member city under its power sales contract with the agency to reflect the reduced debt service on the agency's debt as a result of the foregoing payments.

(c) Indebtedness issued by the authority pursuant to this section shall be secured by nonbypassable charges imposed by the authority upon retail customers receiving transmission and distribution services provided by the requesting member city, which shall be consistent with the stranded cost recovery terms set forth in the requesting member city's application unless otherwise approved by the requesting member city. Indebtedness issued by the authority pursuant to this section shall not be the debt of the State of Texas, the municipal power agency, or any member of the municipal power agency.

(d) The Public Utility Commission of Texas shall provide such assistance to the authority as is necessary to ensure the collection and enforcement of the nonbypassable charges, whether directly or by using the assistance and powers of the requesting member city.

(e) The authority and the Public Utility Commission of Texas are granted all such powers necessary to effectuate the foregoing duties and responsibilities. This section shall be interpreted broadly in a manner consistent with the most cost-effective financing of stranded costs. To the extent possible, the indebtedness issued by the authority shall be structured so that the interest thereon is excluded from gross income for federal income tax purposes. In all events, the interest thereon shall not be subject to tax or included as part of the measurement of tax by the state or any of its political subdivisions.

SECTION 61. Section 11(a), Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The board's authority under this Act is limited to the financing of the acquisition or construction of a building, [~~or~~] the purchase or lease of equipment, or the financing of stranded costs of a municipal power agency. That authority does not affect the authority of the commission or any other state agency.

SECTION 62. The following provisions are repealed:

(1) Section 12.104, Utilities Code;

(2) Chapter 34, Utilities Code;

(3) Subchapters F and G, Chapter 36, Utilities Code; and

(4) Section 37.058, Utilities Code.

SECTION 63. (a) Nothing in this Act shall restrict or limit a municipality's historical right to control and receive reasonable compensation for use of public streets, alleys, rights-of-way, or other public property to convey or provide electricity.

(b) Nothing in this Act shall affect a retail electric utility's right to provide electric service in accordance with its certificate of public convenience and necessity. A certificate of convenience and necessity may, however, be revoked or modified as provided by Section 37.059, Utilities Code, and Section 37.060, Utilities Code, as added by this Act.

SECTION 64. Notwithstanding any other provision of this Act, any person or entity that provides electric service to the institution of higher education on December 31, 2001, shall continue to offer electric service to an institution of higher education until September 1, 2007, at a total rate that is no higher than the rate paid by the institution on December 31, 2001. The rate paid by an institution of higher education on December 31, 2001, shall be based on the rates provided for or described in Section 36.351, Utilities Code. As used in this section, "person or entity" includes, but is not limited to, an electric utility, retail electric provider, municipal corporation, cooperative corporation, or river authority.

SECTION 65. The Public Utility Commission of Texas shall study and make recommendations by December 15, 2000, to the legislature for additional legislation that would move to and establish a competitive electric market in accordance with the changes in law made by this Act.

SECTION 66. Not later than the 180th day after the effective date of this Act, the Public Utility Commission of Texas shall establish rules and procedures for the securitization of stranded costs for river authorities, as provided by Subdivision (2), Subsection (a), Section 40.003, Utilities Code, as added by this Act, and for electric cooperatives, as provided by Section 41.003, Utilities Code.

SECTION 67. This Act takes effect September 1, 1999.

SECTION 68. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend **CSSB 7**, page 11, line 18, by inserting after "action" and before ".", ", unless acting on his or her own behalf and without renumeration"

Floor Amendment No. 2

Amend **CSSB 7** as follows:

(1) In Section 31.002(3)(A), Utilities Code, as added by SECTION 11 of the bill (House committee report page 14, line 3), by strike "locations;" and substitute "locations, provided that an electric customer may not avoid any nonbypassable charges or fees as a result of aggregating its load;".

(2) In Section 31.002(3)(B), Utilities Code, as added by SECTION 11 of the bill (House committee report page 14, line 6), by strike "customers." and substitute "customers, provided that an electric customer may not avoid any nonbypassable charges or fees as a result of aggregating its load.".

Floor Amendment No. 3

Amend **CSSB 7** as follows:

Amend Subsection 31.002(20) on page 19, line 9, by striking the word "and" before "reactive" and after the comma;

On page 19, line 9, by inserting the word "support" after the word "power" and before the comma; and

On page 19, line 10, by inserting the word "ancillary" after the word "other" and before the word "services".

Floor Amendment No. 4

Amend the Wolens amendment to **CSSB 7** to read as follows:

Amend **CSSB 7** as follows:

On page 19, line 9, by inserting the word "support" after the word "power" and before the comma; and

Floor Amendment No. 5

Amend **CSSB 7** by striking SECTION 22 of the bill (page 28, line 18 through page 29, line 4) and renumbering the SECTIONS of the bill appropriately.

Floor Amendment No. 6

Amend **CSSB 7** in Section 35.101(2), Utilities Code, as added by SECTION 23 of the bill (House committee report page 29, line 12), by striking "an institution of" and substituting "a state institution of".

Floor Amendment No. 7

Amend **CSSB 7** (House committee report) as follows:

(1) Strike Section 35.102, Utilities Code, as added by SECTION 23 of the bill (page 29, lines 15-19), and substitute a new Section 35.102 to read as follows:

Sec. 35.102. STATE AUTHORITY TO SELL OR CONVEY POWER. The commissioner, acting on behalf of the state, may sell or otherwise convey power generated from royalties taken in kind as provided by Sections 52.133(d), 53.026, and 53.077, Natural Resources Code, directly to a public retail customer regardless of whether the public retail customer is also classified as a wholesale customer under other provisions of this title. To ensure that the state receives the maximum benefit from the sale of power generated from royalties taken in kind, the commissioner shall use all feasible means to sell that power first to public retail customers that are agencies of this state, institutions of higher education, or public school districts. The remainder of the power, if any, may be sold to public retail customers that are political subdivisions of this state.

(2) Strike Subsection (b), Section 35.103, Utilities Code, as added by SECTION 23 of the bill (page 29, line 26 through page 30, line 3), and substitute a new Subsection (b) to read as follows:

(b) An entity described by Subsection (a) shall provide any utility service, including transmission, distribution, and other services, which must include any stranded costs associated with providing service, to the state at the lowest applicable rate charged for similar service to other customers.

(3) At the end of SECTION 23 of the bill (page 30, between lines 15 and 16), insert a new Section 35.106, Utilities Code, to read as follows:

Sec. 35.106. ACCESS TO POWER GENERATION. If pipeline capacity is available on an existing facility of a gas utility or municipally owned utility, a gas utility or a municipally owned utility may not refuse to provide gas service to an electric utility generating facility, if the purpose of the service is to generate power for public retail customers by the state or an agency of this state.

(4) In the introduction to SECTION 49 of the bill (page 201, lines 24 and 25), strike "Subsections (a), (c), and (d), Section 52.133, Natural Resources Code, are amended" and substitute "Section 52.133, Natural Resources Code, is amended by amending Subsections (a), (c), and (d) and by adding Subsection (f)".

(5) In Section 52.133(c), Natural Resources Code, as amended by SECTION 49 of the bill (page 202, lines 16 and 17), strike "sale, purchase, transportation, and storage" and substitute "sale, marketing, purchase, transportation, including purchase and exchange agreements necessary to transport gas, and storage".

(6) In Section 52.133, Natural Resources Code, as amended by SECTION 49 of the bill (page 202, between lines 24 and 25), insert a new Subsection (f) to read as follows:

(f) For the purposes of this section, royalty taken in kind includes oil or gas sold or marketed by the commissioner that has been produced on state mineral lands or from the first three miles of federal waters adjacent to the state boundaries, also known as the 8g zone.

Amendment No. 8

Amend the Brimer amendment to **CSSB 7** (on page 6 of the packet) as follows:

On page 1, line 8, after 52.133, strike "(d)" and substitute "(f)".

Floor Amendment No. 10

Amend **CSSB 7** (House committee report) as follows:

(1) In Section 39.10(a)(1), Utilities Code, as added by SECTION 40 of the bill (page 50, line 4), strike "extreme weather or in" and substitute "an extreme weather emergency as provided by Subsection (h) or in".

(2) In Section 39.101, Utilities Code, as added by SECTION 40 of the bill (page 53, between lines 14 and 15), insert a new Subsection (h) to read as follows:

(h) A retail electric provider, power generation company, aggregator, or other entity that provides retail electric service may not disconnect service to a residential customer during an extreme weather emergency or on a weekend day. The entity providing service shall defer payment of bills that are due during an extreme weather emergency until after the emergency is over and shall work with customers to establish a pay schedule for deferred bills. For purposes of this subsection, "extreme weather emergency" means a period of at least two weeks in which the average temperatures are more than 90 degrees or less than 32 degrees.

Floor Amendment No. 11

Amend the Garcia amendment (page 12) to **CSSB 7** as follows:

(1) In Subsection (h) on line 13, strike "payment" and substitute "collection of the full payment".

(2) In Subsection (h), strike lines 17-19 and substitute the following:

emergency" means a period when:

(1) the previous day's highest temperature did not exceed 32 degrees fahrenheit and the temperature is predicted to remain at or below that level for the next 24 hours according to the nearest National Weather Service (NWS) reports; or

(2) the NWS issues a heat advisory for any county in the relevant service territory, or when such an advisory has been issued on any one of the previous two calendar days.

Floor Amendment No. 13

Amend **CSSB 7** in Section 39.107(b), Utilities Code, as added by SECTION 40 of the bill (House Committee Report, page 58, line 7), by striking "Metering and billing services provided to residential" and substituting "Metering services provided to residential".

Floor Amendment No. 14

Amend **CSSB 7** by striking Subsection (f), Section 39.152, Utilities Code, as added by SECTION 40 of the bill (House Committee Report page 66, line 15, through page 67, line 1).

Floor Amendment No. 15

Amend **CSSB 7** in Subsection (e), Section 39.154, Utilities Code, as added by SECTION 40 of the bill (house committee report page 70, line 26), by adding after the last sentence:

This subsection applies only to a power generation company that is affiliated with an electric utility that owned and controlled more than 27 percent of the installed generation capacity in the power region on January 1, 1999.

Floor Amendment No. 16

Amend **CSSB 7** on page 83, by inserting a new Subsection (d) between lines 14 and 15 to read as follows:

(d) Notwithstanding any other provision of this title, an electric utility which, before the effective date of this Act, entered into a stipulation or agreement which was approved by the commission on or after January 1, 1996 requiring the utility to pass through to ratepayers the savings resulting from the merger of that utility with another utility shall continue to be bound by the terms of that stipulation or agreement. The commission shall ensure that the pass through of all merger savings required under any such stipulation or agreement shall be fully implemented during the freeze period and shall be reflected in setting the price to beat for that utility.

Amendment No. 17

Amend the Chisum amendment to **CSSB 7** (page 21 of packet) on line 5, after the word "agreement" by inserting "in support of approval of a merger".

Floor Amendment No. 18

Amend **CSSB 7** as follows:

(1) In Section 39.201(i)(1), Utilities Code, as added by SECTION 40 of the bill (page 85, lines 6 and 7), strike "100 percent of its regulatory assets as defined by Section 39.302 and up to 75" and substitute "50 percent of its regulatory assets as defined by Section 39.302 and up to 25".

(2) In Section 39.201(i)(2), Utilities Code, as added by SECTION 40 of the bill (page 85, line 12), strike "up to 100 percent of its estimated stranded costs" and substitute "up to 100 percent of its estimated stranded costs, subject to the limitation provided by Subdivision (1)".

(3) In Section 39.301, Utilities Code, as added by SECTION 40 of the bill (page 120, line 25), strike "The savings associated" and substitute "The commission shall ensure that the savings associated".

(4) In Section 39.302(4), Utilities Code, as added by SECTION 40 of the bill (page 121, lines 17 and 18), strike "means 100 percent of an electric utility's regulatory assets and 75 percent" and substitute "means 50 percent of an electric utility's regulatory assets and 25 percent".

Floor Amendment No. 19

Amend the proposed Greenberg amendment on page 22 of the packet to **CSSB 7** as follows:

(1) Strike items (1) and (2) of the amendment (amendment page 1, lines 2-11).

(2) Strike the text of item (3) of the amendment (amendment page 1, lines 12-15), and substitute: Strike the second sentence of the section (page 120, lines 25 and 26) and substitute: "The proceeds of the transition bonds shall be used solely for the purposes of reducing the amount of recoverable regulatory assets and stranded costs, as determined by the commission in accordance this chapter, through the refinancing or retirement of utility debt or equity. The commission shall ensure that securitization provides tangible and quantifiable benefits to ratepayers, greater than would have been achieved absent the issuance of transition bonds. The commission shall ensure that the structuring and pricing of the transition bonds result in the lowest transition bond charges consistent with market conditions and the terms of the financing order."

(3) Strike item (4) of the amendment (amendment page 1, lines 16-20).

Floor Amendment No. 22

Amend **CSSB 7** as follows:

1. In SECTION 40 of the bill, at page 94 immediately after line 2, add a new subsection (h) to Utilities Code Section 39.203 as follows:

(h) A customer in a multiply certificated service area may switch its retail distribution service provider among certificated retail electric utilities only by disconnecting from the facilities of one retail electric utility and connecting to the facilities of another retail electric utility.

2. In SECTION 40 of the bill, delete Utilities Code Sections 40.061 and 41.064.

Floor Amendment No. 23

Amend **CSSB 7**, Section 40, Sec. 39.252, subsection (b) to read as follows:

(b) Recovery of retail stranded costs by an electric utility shall be from all existing or future retail customers, including the facilities, premises, and loads of those retail customers, within the utility's geographical certificated service area as it existed on May 1, 1999. A retail customer may not avoid stranded cost recovery charges by switching to new on-site generation except as provided by Section 39.262(k). For purposes of this subchapter, "new on-site generation" means electric generation capacity capable of being lawfully delivered to the site without use of utility distribution or transmission facilities and which was not, on or before May 1, 1999, either:

(1) a fully operational facility, or

(2) a project supported by substantially complete filings for all necessary site-specific environmental permits under the rules of the Texas Natural Resource Conservation Commission in effect at the time of filing.

If a customer commences taking energy from new on-site generation which materially reduces the customer's use of energy delivered through the utility's facilities, the customer shall pay an amount each month computed by multiplying the output of the new sum of competition transition charges under Section 39.201 and transition charges under Subchapter G which are in effect during that month. Payment shall be made to the utility, its successors, an assignee or other collection agent responsible for collecting the competitive transition charges and transition charges and shall be collected in addition to the competition transition charges and transition charges applicable to energy actually delivered to the customer through the utility's facilities.

Floor Amendment No. 24

Amend the Turner of Harris amendment to **CSSB 7** (page 25) as follows:

(1) On page 1, line 8, strike "May 1," and substitute "December 31,".

(2) On page 1, line 15, between "output of the" and "new sum", insert "on-site generation by the".

Floor Amendment No. 26

Amend **CSSB 7** (House committee report) as follows:

(1) Strike Subsection (j), Section 39.201, Utilities Code, as added by SECTION 40 of the bill (page 85, lines 15-24) and substitute a new Subsection (j) to read as follows:

(j) Any competition transition charge shall be allocated among retail customer classes according to Section 39.253.

(2) Strike Section 39.253, Utilities Code, as added by SECTION 40 of the bill (page 97, lines 5-19), and substitute a new Section 39.253 to read as follows:

Sec. 39.253. ALLOCATION OF STRANDED COSTS. (a) Any capital costs incurred by an electric utility to improve air quality under Section 39.263 or 39.264 that are included in a utility's invested capital in accordance with those sections shall be allocated among customer classes as follows:

(1) 50 percent of those costs shall be allocated in accordance with the methodology used to allocate the costs of the underlying assets in the electric utility's most recent commission order addressing rate design; and

(2) the remainder shall be allocated on the basis of the energy consumption of the customer classes.

(b) All other retail stranded costs shall be allocated among retail customer classes in accordance with Subsections (c)-(i).

(c) The allocation to the residential class shall be determined by allocating to all customer classes 50 percent of the stranded costs in accordance with the methodology used to allocate the costs of the underlying assets in the electric utility's most recent commission order addressing rate design, and allocating the remainder of the stranded costs on the basis of the energy consumption of the classes.

(d) After the allocation to the residential class required by Subsection (b) has been calculated, the remaining stranded costs shall be allocated to the remaining customer classes in accordance with the methodology used to allocate the costs of the underlying assets in the electric utility's most recent commission order addressing rate design. Non-firm industrial customers shall be allocated stranded costs equal to 150 percent of the amount allocated to that class.

(e) After the allocation to the residential class required by Subsection (C) and the allocation to the non-firm industrial class required by Subsection (D) have been calculated, the remaining stranded costs shall be allocated to the remaining customer classes in accordance with the methodology used to allocate the costs of the underlying assets in the electric utility's most recent commission order addressing rate design.

(f) Notwithstanding any other provision of this section, to the extent that the total retail stranded costs, including regulatory costs, of investor-owned utilities exceed $5 billion, any stranded costs in excess of $5 billion shall be allocated among retail customer classes in accordance with the methodology used to allocate the costs of the underlying assets in the electric utility's most recent commission order addressing rate design.

(g) The energy consumption of the customer classes used in Subsections (a)(2) and (c) shall be based on the relevant class characteristics as of May 1, 1999, adjusted for normal weather conditions.

(h) For purposes of this section, "stranded costs" includes regulatory assets.

(i) Except as provided by Section 39.262(k), no customer or customer class may avoid the obligation to pay the amount of stranded costs allocated to that customer class.

Floor Amendment No. 27

Amend the Bailey Amendment to **CSSB 7** (page 31-33, proposed amendments) as follows:

(1) In item 2, in added Section 39.253(d), Utilities Code (page 2, line 6), strike "Subsection (b)" and substitute "Subsection (c)"

(2) In item 2, in added Section 39.253(e), Utilities Code (page 2, line 14), strike "Subsection (C)" and substitute "Subsection (c)"

(3) In item 2, in added Section 39.253(e), Utilities Code (page 2, line 15), strike "Subsection (D)" and substitute "Subsection (d)"

(4) In item 2, in added Section 39.253(f), Utilities Code (page 2, lines 21 and 22), strike "the total retail stranded costs, including regulatory costs, of" and substitute "the total retail stranded costs, including regulatory assets but not including costs described by Subsection (a), of"

(5) In item 2, in added Section 39.253(f), Utilities Code (page 2, line 22), after "billion" and before the comma, insert "on a statewide basis"

Floor Amendment No. 28

Amend **CSSB 7** in Section 39.254, Utilities Code, as added by SECTION 40 of the bill (page 97, line 25), by striking "competition in 2001" and substituting "competition in 2002".

Floor Amendment No. 29

Amend **CSSB 7** as follows:

(1) Amend Section 39.262(f) on page 106, line 6, by striking "securitization" and inserting "transition".

(2) Amend Section 39.262(f) on page 106, line 6, by striking "competitive" and inserting "competition".

Floor Amendment No. 30

Amend **CSSB 7** in the first sentence of Section 39.262(i), Utilities Code, as added by SECTION 40 of the bill (House Committee Report page 111, line 13), by striking "Subsections (g)(2) and (3)" and substituting "Subsections (h)(2) and (3)".

Floor Amendment No. 31

Amend **CSSB 7** in Section 39.353, Utilities Code, as added by SECTION 40 of the bill (House committee report page 134, between lines 1 and 2), by inserting a new Subsection (h) to read as follows:

(h) The commission shall work with the Texas Department of Economic Development to communicate information about opportunities for operation as aggregators to potential new aggregators, including small and historically underutilized businesses.

Floor Amendment No. 32

Amend **CSSB 7** as follows:

(1) On page 134, line 9, insert "or aggregation by a municipality under Chapter 303, Local Government Code" between "providers" and the period.

(2) On page 134, line 22, insert "or aggregation by a person or political subdivision under Chapter 303, Local Government Code" between "subdivisions" and the period.

(3) On page 189, line 26, insert "receiving electric service from an entity that has implemented customer choice, as defined in Section 31.002, Utilities Code" between "subdivision" and the period.

Floor Amendment No. 33

Amend **CSSB 7** as follows:

Amend Section 39.355 on page 134, line 27, by inserting the words "pursuant to Section 35.032" after the word "commission" and before the period.

Floor Amendment No. 34

Amend **CSSB 7** (House committee report) as follows:

(1) In Section 39.901(e), Utilities Code, as added by SECTION 40 of the bill (page 141, line 26 through page 142, line 8), strike the first two sentences of Subsection (e) and substitute the following:

Not later than May 1 of each year, the commission shall transfer from the system benefit fund to the foundation school fund the amounts determined by the Texas Education Agency under Subsections (b) and (c) to the extent money in the system benefit fund is available. If in any year the system benefit fund is insufficient to make the transfer designated by the Texas Education Agency, the shortfall shall be included in the projected revenue requirement for the system benefit fund the next time the commission sets the fee under Section 39.903, and the shortfall amount shall be transferred to the Foundation School Program the following year if sufficient money in the fund is available.

(2) Strike Section 39.903, Utilities Code, as added by SECTION 40 of the bill (page 143, line 24 through page 146, line 6), and substitute a new Section 39.903 to read as follows:

Sec. 39.903. SYSTEM BENEFIT FUND. (a) The system benefit fund is created as a trust fund with the comptroller and shall be administered by the commission as trustee on behalf of the recipients of money from the fund.

(b) The system benefit fund is financed by a nonbypassable fee set by the commission in an amount not to exceed 50 cents per megawatt hour, except beginning on January 1, 2002, and ending on December 31, 2006, the commission may set the fee in an amount not to exceed 65 cents per megawatt hour to the extent necessary to collect sufficient revenue to fund the 10 percent reduced rate requirements of the program required by Subsection (h). The system benefit fund fee is allocated to customers based on the amount of kilowatt hours used.

(c) The nonbypassable fee may not be imposed on the retail electric customers of a municipally owned utility or electric cooperative before the sixth month preceding the date on which the utility or cooperative implements customer choice. Money distributed from the system benefit fund to a municipally owned utility or an electric cooperative shall be proportional to the nonbypassable fee paid by the municipally owned utility or the electric cooperative, subject to the reimbursement provided by Subsection (i). On request by a municipally owned utility or electric cooperative, the commission shall reduce the nonbypassable fee imposed on retail electric customers served by the municipally owned utility or electric cooperative by an amount equal to the amount provided by the municipally owned utility or electric cooperative or its ratepayers for local low-income programs and local programs that educate customers about the retail electric market in a neutral and nonpromotional manner.

(d) The commission shall annually review and approve system benefit fund accounts, projected revenue requirements, and proposed nonbypassable fees.

(e) The system benefit fund shall provide funding solely for the following regulatory purposes:

(1) programs to assist low-income electric customers provided by Subsections (f)-(l);

(2) customer education programs; and

(3) the school funding loss mechanism provided by Section 39.901.

(f) Notwithstanding Section 39.106(b), the commission shall adopt rules regarding programs to assist low-income electric customers on the introduction of customer choice. The programs may not be targeted to areas served by municipally owned utilities or electric cooperatives that have not adopted customer choice. The programs shall include:

(1) reduced electric rates as provided by Subsections (h)-(l); and

(2) targeted energy efficiency programs to be administered by the Texas Department of Housing and Community Affairs in coordination with existing weatherization programs.

(g) Until customer choice is introduced in a power region, an electric utility may not reduce, in any manner, programs already offered to assist low-income electric customers.

(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. 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.

(i) A retail electric provider, municipally owned utility, or electric cooperative seeking reimbursement from the system benefit fund may not charge an eligible low-income customer a rate higher than the appropriate rate determined under Subsection (h). A retail electric provider not subject to the price to beat, or a municipally owned utility or electric cooperative subject to the nonbypassable fee under Subsection (c), shall be reimbursed from the system benefit fund for the difference between the reduced rate and the rate established under Section 39.106, or as appropriate, the rate established under Section 40.053 or 41.053. A retail electric provider who is subject to the price to beat shall be reimbursed from the system benefit fund for the difference between the reduced rate and the price to beat. The commission shall adopt rules providing for the reimbursement.

(j) The commission shall adopt rules providing for methods of enrolling customers eligible to receive reduced rates under Subsection (h). The rules must provide for automatic enrollment as one enrollment option. The Texas Department of Human Services, on request of the commission, shall assist in the adoption and implementation of these rules. The commission and the Texas Department of Human Services shall enter into a memorandum of understanding establishing the respective duties of the commission and the department in relation to the automatic enrollment.

(k) A retail electric provider is prohibited from charging the customer a fee for participation in the reduced rate program.

(l) For the purposes of this section, a "low-income electric customer" is an electric customer:

(1) whose household income is not more than 125 percent of the federal poverty guidelines; or

(2) who receives food stamps from the Texas Department of Human Services or medical assistance from a state agency administering a part of the medical assistance program.

(m) Funding of programs to assist low-income customers under Subsections (f)-(l) and customer education programs shall be given funding priority over the school funding loss mechanism provided by Section 39.901.

Amendment No. 35

Amend the Turner amendment to **CSSB 7** (on page 45 of the packet) as follows:

Add the following language after the period on page 2, line 22:

"The commission shall report to the Legislative Oversight Committee if the System Benefit fund fee is insufficient to fund the purposes set forth in subsection (e) to the extent required by this section"

Floor Amendment No. 36

Amend the proposed Turner amendment (page 45) to **CSSB 7** as follows:

(1) Strike item (1) of the amendment (amendment page 1, lines 2-16).

(2) In Section 39.903, Utilities Code, as added by item (2) of the amendment (amendment page 3, line 25) between "charged." and "For", insert: "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).".

(3) Strike Section 39.903(m), Utilities Code, as added by item (2) of the amendment (amendment page 5, lines 6-9).

Floor Amendment No. 37

Amend **CSSB 7** as follows:

(1) In SECTION 40 of the bill, between proposed Sections 39.901 and 39.902, Utilities Code (house committee printing page 142, between lines 21 and 22), insert the following:

Sec. 39.9015. PROPERTY TAX LOSS REIMBURSEMENT FOR CERTAIN TAXING UNITS. (a) In this section, "affected taxing unit" means a taxing unit, as defined by Section 1.04, Tax Code, other than a school district, that levied an ad valorem tax on a nuclear asset of an electric utility on January 1, 1999.

(b) Not later than August 1 of each year, the chief appraiser of each appraisal district in which a nuclear asset of an electric utility was located on January 1, 1999, shall determine for each affected taxing unit that participates in the appraisal district the amount, if any, by which the taxable value of the nuclear asset has decreased from the preceding tax year to the current tax year as a direct result of electric utility restructuring.

(c) Not later than August 15 of each year, a chief appraiser required to make a determination under Subsection (b) shall certify in a written report delivered to the comptroller:

(1) the amount of any reduction in the taxable value of the asset determined under Subsection (b) for each affected taxing unit that participates in the appraisal district; and

(2) the tax rate for the preceding tax year for each affected taxing unit.

(d) Not later than September 1 of each year, the comptroller shall:

(1) examine, verify, and correct, if necessary, the information in each report received under Subsection (c);

(2) determine, as provided by Subsection (f), the amount of reimbursement to which each affected taxing unit is entitled for any reduction in the taxable value of a nuclear asset of an electric utility that has occurred from the preceding tax year to the current tax year as a direct result of electric utility restructuring; and

(3) notify the commission of the amount of reimbursement determined under Subdivision (2).

(e) Not later than November 1 of each year, the commission shall transfer from the system benefit fund to each affected taxing unit that is entitled to reimbursement the amount of the taxing unit's reimbursement determined by the comptroller.

(f) The comptroller shall determine the amount of reimbursement to which an affected taxing unit is entitled for a year by multiplying the tax rate of the taxing unit for the preceding tax year by the amount of the reduction in the taxable value of the

nuclear asset from the preceding tax year to the current tax year as a direct result of electric utility restructuring.

(g) This section expires December 31, 2007.

(2) In SECTION 40 of the bill, strike proposed Section 39.903(e), Utilities Code (house committee printing page 144, lines 20-26), and substitute the following:

(e) The system benefit fund shall provide funding solely for:

(1) customer education programs;

(2) programs to assist low-income electric customers provided by Subsections (f)-(k);

(3) the school funding loss mechanism under Section 39.901; and

(4) the property tax loss reimbursement paid to taxing units under Section 39.9015.

Floor Amendment No. 39

Amend **CSSB 7** (House committee report) as follows:

(1) In Section 39.902, Utilities Code, as added by SECTION 40 of the bill (page 143, between lines 23 and 24), insert a new Subsection (d) to read as follows:

(d) The commission may not fund the educational program required by this section with money from the system benefit fund.

(2) In Section 39.903(e), Utilities Code, as added by Section 40 of the bill (page 144, lines 22-24), strike Subdivisions (1) and (2) and substitute new Subdivisions (1) and (2) to read as follows:

(1) programs to assist low-income electric customers provided by Subsections (f)-(k);

(2) programs to educate customers about the low-income electric customers' assistance program provided by Subsections (f)-(k); and

Floor Amendment No. 40

Amend the Luna amendment (page 56) to **CSSB 7** by striking the text of the amendment and substituting the following:

Amend **CSSB 7** in Section 39.902, Utilities Code, as added by SECTION 40 of the bill (House committee report page 143, line 5), by inserting between "necessary." and "The" the following:

The educational program shall inform customers of their rights and of the protections available through the commission and the office. The educational program may not duplicate customer information efforts undertaken by retail electric providers or other private entities.

Floor Amendment No. 41

Amend the Uher amendment No. 37 to **CSSB 7** as follows:

(1) Strike proposed Section 39.9015 of the Utilities Code (page 1 line 5 through page 2, line 20) and substitute the following:

Sec. 39.9015. INTERIM STUDY ON AFFECTED TAXING UNITS. (a) The lieutenant governor and speaker of the house of representatives shall appoint an interim committee to conduct an interim study and make recommendations regarding the effect of electric utility restructuring on the tax revenue of taxing units in a county on the coast of the Gulf of Mexico, as defined by Section 1.04, Tax Code, other than school districts, that levied an ad valorem tax on a nuclear asset of an electric utility on January 1, 1999.

(b) Not later than January 1, 2001, the interim committee shall file with the lieutenant governor and speaker of the house of representatives a report containing an evaluation of:

(1) the fiscal impact of electric utility restructuring on taxing units; and

(2) recommendations to mitigate any reduction in tax revenue to affected taxing units, including allocations from the system benefit fund.

(c) This section expires January 2, 2001.

Sec. 39.9016. NUCLEAR SAFETY FEE. An electric utility that operates a nuclear asset located in a county on the coast of the Gulf of Mexico shall pay a nuclear safety fee for the year 2000 and the year 2001 to each taxing unit in which the nuclear asset is located, other than a school district, in an amount equal to the difference between the ad valorem taxes imposed by the taxing unit in 1999 and the amount of ad valorem taxes imposed the unit in the year for which the fee is due, except that the amount of the fee may not exceed one-half the taxes imposed on the asset by the unit in 1999. The nuclear safety fee shall be considered a tax or fee under Section 39.258(5).

(2) Strike the text on page 2, line 21, through page 3, line 1.

Floor Amendment No. 42

Amend **CSSB 7** (Draft #76R16147) on page 144, line 4 by adding an "(a)" between the "." and "Except"; and by adding a new subsection (b) to read as follows:

(b)(1) The commission shall analyze the financial problems of the municipal power agency, described in (2) of this subsection. Before September 1, 2000, the present recommendations for solving the problems to the Speaker of the House of Representatives, the Lieutenant Governor, the members of the Legislature, the Governor and the agency.

(2) This subsection applies to a municipal power agency as defined by Chapter 163, that has stranded costs in excess of $6,000 per customer as determined by the April 1998 Report to the Texas Senate Interim Committee on Electric Restructuring entitled "Potentially Strandable Investment (ECOM) Report: 1998 Update."

Floor Amendment No. 43

Amend the Zbranek amendment to **CSSB 7** by striking the text of the amendment and substituting the following:

Amend **CSSB 7** by adding a new appropriately numbered Section to read as follows and renumbering subsequent Sections accordingly:

SECTION __. Subchapter A, Chapter 163, Utilities Code, is amended by adding Section 163.002 to read as follows:

Sec. 163.002. REPORT ON PROBLEMS. (a) The commission shall analyze the financial problems of the municipal power agency, described in subsection (b). Before September 1, 2000, the present recommendations for solving the problems to the Speaker of the House of Representatives, the Lieutenant Governor, the members of the Legislature, the Governor and the agency.

(b) This subsection applies to a municipal power agency as defined by this chapter, that has stranded costs in excess of $6,000 per customer as determined by the April 1998 Report to the Texas Senate Interim Committee on Electric Restructuring entitled "Potentially Strandable Investment (ECOM) Report: 1998 Update."

Floor Amendment No. 44

Amend **CSSB 7** in Section 39.904, Utilities Code, in SECTION 37 of the bill (House Substitute page 136, line 18), by adding a new subsection (e) as follows:

(e) A municipally owned utility operating a gas distribution system may credit toward satisfaction of the requirements of this section any production or acquisition of landfill gas supplied to the gas distribution system, based on conversion to kilowatt hours of the thermal energy content in BTUs of the renewable source and using for the conversion factor the systemwide average heat rate of the gas-fired units of the combined utility's electric system as measured in BTU/kwh.

Floor Amendment No. 45

Amend the proposed Longoria amendment to **CSSB 7** (page 60) by striking the text of the amendment and substituting the following:

Amend **CSSB 7** in Section 39.904, Utilities Code, as added by SECTION 40 of the bill (page 148, between lines 9 and 10) by adding a new Subsection (f) to read as follows:

(f) A municipally owned utility operating a gas distribution system may credit toward satisfaction of the requirements of this section any production or acquisition of landfill gas supplied to the gas distribution system, based on conversion to kilowatt hours of the thermal energy content in BTUs of the renewable source and using for the conversion factor the systemwide average heat rate of the gas-fired units of the combined utility's electric system as measured in BTUs per kilowatt hour.

Floor Amendment No. 46

Amend **CSSB 7** as follows:

(1) Strike Sections 39.9044 and 39.9048, Utilities Code, as added by SECTION 40 of the bill (page 148, line 10 through page 150, line 18).

(2) Strike SECTIONS 58 and 59 of the bill (page 209, line 16 through page 210, line 14) and renumber subsequent SECTIONS appropriately.

Floor Amendment No. 47

Amend the proposed Junell amendment to **CSSB 7** (page 61) by striking lines 2-4 and substituting the following:

(1) Strike Section 39.9048, Utilities Code, as added by SECTION 40 of the bill (House committee report page 150, lines 7-18), and substitute a new Section 39.9048 (necessary to remove the references to the tax exemptions) to read as follows:

Sec. 39.9048. NATURAL GAS FUEL. It is the intent of the legislature that:

(1) the cost of generating electricity remain as low as possible; and

(2) the state establish and publicize a program to keep the costs of fuel, such as natural gas, used for generating electricity low.

Floor Amendment No. 48

Amend **CSSB 7** by striking Section 39.905, Utilities Code, as added by SECTION 40 of the bill (House Committee Report page 150, line 19, through page 151, line 15), and substituting a new Section 39.905 to read as follows:

Sec. 39.905. GOAL FOR ENERGY EFFICIENCY. (a) It is the goal of the legislature that:

(1) retail electric providers, and municipally owned utilities and electric cooperatives serving in areas in which customer choice has been introduced, provide energy savings incentive programs and customer information about energy efficiency; and

(2) all customers, in all customer classes, have a choice of and access to energy efficiency alternatives and other choices from the market that allows each customer to reduce energy consumption and reduce energy costs.

(b) The commission may condition issuance of a certificate under Section 39.352 on a commitment to provide reasonable energy savings incentive programs and customer information about energy efficiency.

Floor Amendment No. 49

Amend the Haggerty amendment to **CSSB 7** (page 62) on page 1 by striking lines 7-19 and substituting:

(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 allows each customer to reduce energy consumption 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 goal of this section is achieved by January 1, 2004.

Floor Amendment No. 50

Amend **CSSB 7** in Section 39.907(c), Utilities Code, as added by SECTION 40 of the bill (House Committee report page 152, line 7), by adding at the end of Subsection (c) the following:

"In making appointments to the committee, the appointing officials shall attempt to appoint persons who represent the gender composition, minority populations, and geographic regions of the state."

Floor Amendment No. 51

Amend **CSSB 7** in Subchapter Z, Chapter 39, Utilities Code, as added by SECTION 40 of the bill (page 153, between lines 16 and 17), by adding a new Section 39.909 to read as follows:

Sec. 39.909. PLAN AND REPORT OF WORKFORCE DIVERSITY AND OTHER BUSINESS PRACTICES. (a) In this section, "small business" and "historically underutilized business" have the meanings assigned by Section 481.191, Government Code.

(b) Before January 1, 2000, each electric utility and electric cooperative shall develop and submit to the commission a comprehensive seven-year plan to enhance diversity of its workforce in all occupational categories and for increasing contracting opportunities for small and historically underutilized businesses. The plan must consist of:

(1) the electric utility's or electric cooperative's historical and current performance with regard to workforce diversity and contracting with small and historically underutilized businesses;

(2) specific goals that the electric utility or electric cooperative will pursue in these areas over the period of the plan;

(3) specific programs, strategies, and activities the electric utility or electric cooperative will undertake to achieve each of those goals; and

(4) the business partnership initiatives the electric utility or electric cooperative will undertake to facilitate small and historically underutilized business entry into the electric energy market as generators and retail energy providers.

(c) The commission by rule shall establish a comprehensive set of incentives to facilitate small and historically underutilized business entry into the electric energy market as generators and retail energy providers.

(d) Each electric utility and electric cooperative shall submit an annual report to the commission and the legislature relating to its efforts to improve workforce diversity and contracting opportunities for small and historically underutilized businesses. The report must be submitted on October 1 of each year, or may be included as part of any other annual report submitted by the electric utility or electric cooperative to the commission. The report must include:

(1) the diversity of the electric utility's or electric cooperative's workforce as of the time of the report;

(2) the electric utility's or electric cooperative's level of contracting with small and historically underutilized businesses;

(3) the specific progress made under the plan under Subsection (b);

(4) the specific strategies, programs, and activities undertaken under the plan during the preceding year;

(5) an assessment of the success of each of those strategies, programs, and activities;

(6) the extent to which the electric utility or electric cooperative has carried out its functions through contracts or joint ventures with unaffiliated private entities, including small and historically underutilized businesses; and

(7) the specific goals, strategies, programs, and activities the electric utility or electric cooperative will pursue during the next year to increase the diversity of its workforce and contracting opportunities for small and historically underutilized businesses.

(e) This section applies to a retail electric provider on certification. The retail electric provider shall submit a plan under Subsection (b) before the first anniversary of the date of certification and submit annual reports after submission of the plan as provided by Subsection (d).

Floor Amendment No. 52

Amend the proposed Davis amendment (page 65) to **CSSB 7** as follows:

(1) On page 1, line 10, strike "seven-year" and substitute "five-year".

(2) On page 1, line 18, strike "specific goals" and substitute "initiatives".

(3) On page 1, line 21, strike "specific programs, strategies" and substitute "a listing of programs".

(4) On page 1, line 23, strike "goals" and substitute "initiatives".

(5) On page 1, line 24, strike "the business" and substitute "a listing of the business".

(6) On page 2, line 2, strike the period and substitute "taking into account opportunities for contracting and joint ventures.".

(7) On page 2, strike lines 3-6.

(8) On page 2, line 7, strike "(d)" and substitute "(c)".

(9) On page 2, line 22, strike "strategies" and substitute "initiatives".

(10) On page 2, line 25, strike "strategies" and substitute "initiatives".

(11) On page 2, line 27, strike "functions through" and substitute "initiatives to facilitate opportunities for".

(12) On page 3, lines 1 and 2, strike "unaffiliated private entities, including".

(13) On page 3, line 3, strike "specific goals, strategies" and substitute "initiatives".

(14) On page 3, strike lines 8-12.

(15) Strike "or electric cooperative", "and electric cooperative", "or electric cooperative's", and "and electric cooperative's" each time those terms occur.

Floor Amendment No. 53

Amend **CSSB 7** as follows:

Amend Subsection 40.003(e) on page 157, line 21, by striking the word "nonbypassable" between "any" and "transition", and on line 26, by striking the word "nonbypassable" before the word "transition".

Floor Amendment No. 57

Amend **CSSB 7** in Section 40.004(6), Utilities Code, as added by SECTION 40 of the bill (House committee report page 158, line 27), by striking "energy credits program under Section 39.904(b)" and substituting "energy credits program under Section 39.904(b) and the natural gas energy credits program under Section 39.9044(b)".

Floor Amendment No. 61

Amend **CSSB 7** on page 210, line 24 by deleting "August 1, 1975" and replacing it with "November 1, 1979".

Floor Amendment No. 62

Amend **CSSB 7** (House committee report) by adding the following section, numbered appropriately, and by renumbering subsequent sections of the bill accordingly:

SECTION _____. (a) Chapter 340, Acts of the 51st Legislature, Regular Session, 1949, is amended by adding Section 7B to read as follows:

Sec. 7B. (a) The District may:

(1) develop, generate, transmit, or distribute water power and electric energy inside the District's boundaries for its own use;

(2) purchase electric energy from any available source for use at a facility the District owns, operates, and maintains inside the District's boundaries;

(3) enter into an agreement to acquire, install, construct, finance, operate, make an addition to, own, or operate an electric energy generating, transmission, or distribution facility jointly with another person; or

(4) sell or otherwise dispose of any of the District's interest in a jointly owned facility described by Subdivision (3) of this section.

(b) This section does not affect the applicability of Title 2, Utilities Code, to the District or to actions of the District.

(b) This section takes effect January 1, 2002.

Floor Amendment No. 63

Amend the Counts amendment to **CSSB 7** (page 80) as follows:

(1) On page 1, strike lines 1-4 and substitute:

SECTION ___. Subchapter H, Chapter 49, Water Code, is amended by adding Section 49.233 to read as follows:

Sec. 49.233. ELECTRIC GENERATION, TRANSMISSION, AND DISTRIBUTION FOR CERTAIN DISTRICTS. (a) A district that owns or operates raw water pipelines that convey surface water, ground water, or both surface and ground water, through more than 10 counties for municipal and industrial purposes may:

(2) On page 1, strike lines 18-20 and substitute:

(b) A district governed by this section:

(1) is subject to the transmission line certification provisions of Chapter 37, Utilities Code;

(2) may not generate electricity by means of hydroelectric generation.

(3) Renumber subsequent sections of the bill accordingly.

Floor Amedment No. 64

Amend **CSSB 7** by striking Section 64 of the bill (House committee printing page 213, lines 16-27), and substituting a new Section 64 to read as follows:

SECTION 64. Notwithstanding any other provision of this Act or Title 2, Utilities Code, any person or entity that provides electric service to a four-year state university, upper level institution, Texas state technical college, or college, as provided by Section 36.351, Utilities Code, on December 31, 2001, shall continue to offer electric service to a four-year state university, upper level institution, Texas state technical college, or college, as provided by Section 36.351, Utilities Code, until September 1, 2007, at a total rate that is no higher than the rate applicable to the university, institution, or college on December 31, 2001. The rate applicable to a four-year state university, upper level institution, Texas state technical college, or college, as provided by Section 36.351, Utilities Code, on December 31, 2001, shall be based on the rates provided for or described in Section 36.351, Utilities Code. However, a person or entity that provides electric service to a four-year state university, upper level institution, Texas state technical college, or college, as provided by Section 36.351, Utilities Code, shall be allowed to adjust its fuel factor as provided by Section 39.202(l), Utilities Code, as added by this Act, or, in the case of a municipally owned utility or electric cooperative, rates may be adjusted as provided by Chapters 40 and 41, Utilities Code, as added by this Act, as applicable, for verifiable increases in costs. As used in this section, "person or entity" includes an electric utility, affiliated retail electric provider, municipal corporation, cooperative corporation, or river authority.

Floor Amendment No. 65

Amend amendment by Craddick on page 81 of the packet to **CSSB 7** as follows:

(1) On page 1, line 18, strike "However, a person or entity" and substitute "However, a person or entity that is not an electric cooperative or a municipality owned utility".

(2) On page 1, lines 23-26, strike "Act, or, in the case of a municipally owned utility or electric cooperative, rates may be adjusted as provided by Chapters 40 and 41, Utilities Code, as added by this Act, as applicable, for verifiable increases in costs." and substitute "Act. A person or entity that is an electric cooperative that provides electric service under this section shall be allowed to adjust its fuel factor in accordance with the procedures provided by Section 36.203, Utilities Code. A person or entity that is a municipally owned utility that provides electric service under this section shall be allowed to adjust its fuel factor in accordance with the applicable provisions of the Utilities Code.".

Floor Amendment No. 66

Substitute the following for the Zbranek amendment to the Zbranek amendment to **CSSB 7**:

Amend the Zbranek amendment by striking the text of the amendment and substituting the following:

Amend **CSSB 7** by adding a new appropriately numbered Section to read as follows and renumbering subsequent Sections accordingly:

SECTION __. Subchapter A, Chapter 163, Utilities Code, is amended by adding Section 163.002 to read as follows:

Sec. 163.002. REPORT ON PROBLEMS. (a) The commission shall analyze the financial problems of the municipal power agency described by Subsection (b). Before September 1, 2000, the commission shall present recommendations for solving the problems to the speaker of the house of representatives, the lieutenant governor, the members of the legislature, and the municipal power agency.

(b) This subsection applies to a municipal power agency as defined by this chapter that has stranded costs in excess of $6,000 per customer as determined by the April 1998 Report to the Texas Senate Interim Committee on Electric Restructuring entitled "Potentially Strandable Investment (ECOM) Report: 1998 Update."

Floor Amendment No. 1 on Third Reading

Amend **CSSB 7** on third reading by striking the text of second reading amendment no. 27 and substituting:

"Amend the Bailey Amendment to **CSSB 7** (page 31-33, proposed amendments) as follows:

(1) In item 2, in added Section 39.253 (d), Utilities Code (page 2, line 6), strike "Subsection (b)" and substitute "Subsection (c)"

(2) In item 2, in added Section 39.253(e), Utilities Code (page 2, line 14), strike "Subsection (C)" and substitute "Subsection (c)"

(3) In item 2, in added Section 39.253(e), Utilities Code (page 2, line 15), strike "Subsection (D)" and substitute "Subsection (d)"

(4) In item 2, in added Section 39.253(f), Utilities Code (page 2, lines 21 and 22), strike "the total retail stranded costs, including regulatory costs, of" and substitute "the total retail stranded costs, including regulatory assets, of"

(5) In item 2, in added Section 39.253(f), Utilities Code (page 2, line 22), after "billion" and before the comma, insert "on a statewide basis""

Floor Amendment No. 2 on Third Reading

Amend **CSSB 7**, on third reading, in Section 39.252(b), Utilities Code, as added by the Turner amendment no. 23, adopted on 2nd reading, by striking "means electric generation capacity capable of being" and substituting "means electric generation capacity greater than 10 megawatts capable of being".

Floor Amendment No. 3 on Third Reading

Amend **CSSB 7** on third reading by striking the text of second reading amendment no. 63 and substituting the following:

"Amend the Counts amendment to **CSSB 7** (page 80) as follows:

(1) On page 1, strike lines 1-4 and substitute:

SECTION ___. Subchapter H, Chapter 49, Water Code, is amended by adding Section 49.233 to read as follows:

Sec. 49.233. ELECTRIC GENERATION, TRANSMISSION, AND DISTRIBUTION FOR CERTAIN DISTRICTS. (a) A district that owns or operates raw water pipelines that convey surface water, ground water, or both surface and ground water, through more than 10 counties for municipal and industrial purposes may:

(2) On page 1, strike lines 18-19 and substitute:

(b) A district governed by this section:

(1) is subject to the transmission line certification provisions of Chapter 37, Utilities Code;

(2) may not generate electricity by means of hydroelectric generation.

(3) Renumber subsequent sections of the bill accordingly."

The amendments were read.

On motion of Senator Sibley, the Senate concurred in the House amendments to **SB 7** by a viva voce vote.

GUEST PRESENTED

The President introduced to the Senate Carlos Zaffirini, son of Senator Zaffirini.

The Senate welcomed Carlos.

SENATE BILL 103 WITH HOUSE AMENDMENTS

Senator Bivins called **SB 103** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 103** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to state assessments of public school students.

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

SECTION 1. Subsection (a), Section 28.025, Education Code, is amended to read as follows:

(a) The State Board of Education by rule shall determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under Section 28.002. A student may graduate and receive a diploma only if:

(1) the student successfully completes[~~:~~

[~~(1)~~] the curriculum requirements identified by the board and complies with Section 39.025(a) [~~the exit-level assessment instrument administered under Section 39.023(c) or each end-of-course assessment instrument required to be adopted under Section 39.023(d)~~]; or

(2) the student successfully completes an individualized education program developed under Section 29.005.

SECTION 2. Subchapter D, Chapter 29, Education Code, is amended by adding Section 29.124 to read as follows:

Sec. 29.124. ASSESSMENT STANDARDS FOR STUDENT PROJECTS. (a) The agency shall develop standards for assessing the written or other projects that are produced by students in a program for gifted and talented students. The assessment standards shall be used to assess students in grades four and eight and exit-level students.

(b) The superintendent of a school district or the superintendent's designee shall present annual reports to the board of trustees of the district on the level of achievement of students in the grade levels specified by Subsection (a) participating in a program for gifted and talented students.

(c) Subsection (b) applies beginning with the 2003-2004 school year. This subsection expires September 1, 2004.

SECTION 3. Section 39.022, Education Code, is amended to read as follows:

Sec. 39.022. ASSESSMENT PROGRAM. The agency [~~State Board of Education~~] by rule shall create and implement a statewide assessment program that is primarily performance-based to ensure school accountability for student achievement that achieves the goals provided under Section 4.002. After adopting rules under this section, the agency [~~State Board of Education~~] shall consider the importance of maintaining stability in the statewide assessment program when adopting any subsequent modification of the rules.

SECTION 4. Subsections (a), (c), (e), and (g), Section 39.023, Education Code, are amended to read as follows:

(a) The agency shall adopt appropriate criterion-referenced assessment instruments designed to assess competencies in reading, writing, mathematics, social studies, and science. All students, except students assessed under Subsection (b) or exempted under Section 39.027, shall be assessed in:

(1) mathematics, annually in grades three through 10;

(2) reading [~~and mathematics~~], annually in grades three through nine [~~eight~~];

(3) [~~(2)~~] writing, in grades four and seven [~~eight~~];

(4) English language arts, in grade 10; [~~and~~]

(5) [~~(3)~~] social studies, in grades eight and 10; and

(6) science, in grade 10 [~~at an appropriate grade level determined by the State Board of Education~~].

(c) The agency shall also adopt secondary exit-level assessment instruments designed to be administered to students in grade 11 to assess competencies in mathematics, [~~and~~] English language arts, social studies, and science. The

mathematics section must include at least Algebra I and geometry. The English language arts section must include at least English III and must include the assessment of writing competencies. The social studies section must include United States history. The science section must include at least biology, chemistry, and physics. The assessment instruments must be designed to assess a student's mastery of minimum skills necessary for high school graduation. If a student is in a special education program under Subchapter A, Chapter 29, the student's admission, review, and dismissal committee shall determine whether any allowable modification is necessary in administering to the student an assessment instrument required under this subsection or whether the student should be exempted under Section 39.027(a)(2). The agency [~~State Board of Education~~] shall administer the assessment instruments. The agency [~~State Board of Education~~] shall adopt a schedule for the administration of secondary exit-level assessment instruments. Each student who did not perform satisfactorily on any secondary exit-level assessment instrument when initially tested shall be given multiple opportunities to retake that assessment instrument. A student who performs at or above a level established by the Texas Higher Education Coordinating Board on the secondary exit-level assessment instruments is exempt from the requirements of Section 51.306.

(e) Under rules adopted by the agency [~~State Board of Education~~], the agency shall release the questions and answer keys to each assessment instrument administered under Subsection (a), (b), or (c)[~~, or (d)~~] after the last time the instrument is administered for a school year. To ensure a valid bank of questions for use each year, the agency is not required to release a question that is being field-tested and was not used to compute the student's score on the instrument. The agency shall also release, under board rule, each question that is no longer being field-tested and that was not used to compute a student's score.

(g) The agency [~~State Board of Education~~] may adopt one appropriate, nationally recognized, norm-referenced assessment instrument in reading and mathematics to be administered to a selected sample of students in the spring. If adopted, a norm-referenced assessment instrument must be a secured test. The state may pay the costs of purchasing and scoring the adopted assessment instrument and of distributing the results of the adopted instrument to the school districts. A district that administers the norm-referenced test adopted under this subsection shall report the results to the agency in a manner prescribed by the commissioner.

SECTION 5. Subsection (a), Section 39.024, Education Code, is amended to read as follows:

(a) Except as otherwise provided by this subsection, the agency [~~State Board of Education~~] shall determine the level of performance considered to be satisfactory on the assessment instruments. The admission, review, and dismissal committee of a student being assessed under Section 39.023(b) shall determine the level of performance considered to be satisfactory on the assessment instruments administered to that student in accordance with criteria established by agency rule.

SECTION 6. Subsection (a), Section 39.025, Education Code, is amended to read as follows:

(a) A student may not receive a high school diploma until the student has performed satisfactorily on the secondary exit-level assessment instruments for English language arts, [~~and~~] mathematics, social studies, and science administered under Section 39.023(c) [~~or on:~~

[~~(1) the end-of-course assessment instruments adopted under Section 39.023(d) in Algebra I and English II; and~~

[~~(2) the end-of-course assessment instrument adopted under Section 39.023(d) in either Biology I or United States history~~].

SECTION 7. Section 39.026, Education Code, is amended to read as follows:

Sec. 39.026. LOCAL OPTION. In addition to the assessment instruments adopted and administered by the agency [~~and administered by the State Board of Education~~], a school district may adopt and administer criterion-referenced or norm-referenced assessment instruments, or both, at any grade level. A norm-referenced assessment instrument adopted under this section must be economical, nationally recognized, and state-approved.

SECTION 8. Section 39.027(b), Education Code, is amended to read as follows:

(b) The agency [~~State Board of Education~~] shall adopt rules under which a dyslexic student who is not exempt under Subsection (a) may use procedures including oral examinations if appropriate or may be allowed additional time or the materials or technology necessary for the student to demonstrate the student's mastery of the competencies the assessment instruments are designed to measure.

SECTION 9. Section 39.029, Education Code, is amended to read as follows:

Sec. 39.029. MIGRATORY CHILDREN. The agency [~~State Board of Education~~] by rule may provide alternate dates for the administration of the assessment instruments to a student who is a migratory child as defined by 20 U.S.C. Section 6399. The alternate dates may be chosen following a consideration of migrant work patterns, and the dates selected may afford maximum opportunity for the students to be present when the assessment instruments are administered.

SECTION 10. Subsection (a), Section 39.030, Education Code, is amended to read as follows:

(a) In adopting academic skills assessment instruments under this subchapter, the agency [~~State Board of Education~~] or a school district shall ensure the security of the instruments and tests in their preparation, administration, and grading. Meetings or portions of meetings held by the State Board of Education or a school district at which individual assessment instruments or assessment instrument items are discussed or adopted are not open to the public under Chapter 551, Government Code, and the assessment instruments or assessment instrument items are confidential.

SECTION 11. Subsections (c)-(e), Section 39.032, Education Code, are amended to read as follows:

(c) State and national norms of averages shall be computed using data that are not more than six years old at the time the assessment instrument is administered and that are representative of the group of students to whom the assessment instrument is administered. The standardization norms shall be based on a national probability sample that meets accepted standards for educational and psychological testing and shall be updated at least every six years using proven psychometric procedures approved by the agency [~~State Board of Education~~].

(d) A company or organization that fails to comply with this section is liable to the state in an amount equal to three times the amount of actual damages. The actual damages are presumed to be at least equal to the amount charged by the company or organization to a school district for the assessment instrument, including any charge for grading the assessment instrument. The attorney general, a district attorney, or a county attorney may bring suit to collect the damages on the request of the agency

[~~State Board of Education~~] or on the request of a student or a parent or guardian of a student to whom the assessment instrument was administered.

(e) The agency [~~State Board of Education~~] shall adopt rules for the implementation of this section and for the maintenance of the security of the contents of all assessment instruments.

SECTION 12. Subsection (c), Section 39.033, Education Code, is amended to read as follows:

(c) A private school must reimburse the agency for the cost of administering an assessment instrument under this section. The agency [~~State Board of Education~~] shall determine the cost under this section. The per-student cost may not exceed the cost of administering the same assessment to a student enrolled in a public school district.

SECTION 13. Subsections (b) and (d), Section 39.051, Education Code, are amended to read as follows:

(b) Performance on the indicators adopted under this section shall be compared to state-established standards. The degree of change from one school year to the next in performance on each indicator adopted under this section shall also be considered. The indicators must be based on information that is disaggregated with respect to race, ethnicity, sex, and socioeconomic status and must include:

(1) the results of assessment instruments required under Sections 39.023(a) and (c), aggregated by grade level and subject area;

(2) dropout rates;

(3) student attendance rates;

(4) the percentage of graduating students who attain scores on the secondary exit-level assessment instruments required under Subchapter B that are equivalent to a passing score on the test instrument required under Section 51.306;

(5) the percentage of graduating students who meet the course requirements established for the recommended high school program by State Board of Education rule;

(6) the results of the Scholastic Assessment Test (SAT) and the American College Test;

(7) for students who have failed to perform satisfactorily on an assessment instrument required under Section 39.023(a) or (c), the numerical progress of those students on subsequent assessment instruments required under those sections, aggregated by grade level and subject area [~~the percentage of students taking end-of-course assessment instruments adopted under Section 39.023(d)~~];

(8) the percentage of students exempted, by exemption category, from the assessment program generally applicable under this subchapter; and

(9) any other indicator the State Board of Education adopts.

(d) Annually, the commissioner shall define exemplary, recognized, and unacceptable performance for each academic excellence indicator included under Subsections (b)(1) through (7) [~~(6)~~] and shall project the standards for each of those levels of performance for succeeding years.

SECTION 14. Subsections (b) and (c), Section 39.072, Education Code, are amended to read as follows:

(b) The academic excellence indicators adopted under Sections 39.051(b)(1) through (7) [~~(6)~~] shall be the main consideration of the agency in the rating of the district under this section. Additional criteria in the rules may include consideration of:

(1) compliance with statutory requirements and requirements imposed by rule of the State Board of Education under specific statutory authority that relate to:

(A) reporting data through the Public Education Information Management System (PEIMS);

(B) the high school graduation requirements under Section 28.025; or

(C) an item listed in Sections 7.056(e)(3)(C)-(I) that applies to the district; and

(2) the effectiveness of the district's programs in special education based on the agency's most recent compliance review of the district and programs for special populations.

(c) The agency shall evaluate against state standards and shall report the performance of each campus in a district and each open-enrollment charter school on the basis of the campus's performance on the indicators adopted under Sections 39.051(b)(1) through (7) [~~(6)~~].

SECTION 15. Subsections (a) and (b), Section 39.073, Education Code, are amended to read as follows:

(a) The agency shall annually review the performance of each district and campus on the indicators adopted under Sections 39.051(b)(1) through (7) [~~(6)~~] and determine if a change in the accreditation status of the district is warranted.

(b) Each annual review shall include an analysis of the indicators under Sections 39.051(b)(1) through (7) [~~(6)~~] to determine district and campus performance in relation to:

(1) standards established for each indicator;

(2) required improvement as defined under Section 39.051(c); and

(3) comparable improvement as defined by Section 39.051(c).

SECTION 16. Subsection (e), Section 39.074, Education Code, is amended to read as follows:

(e) If an annual review indicates low performance on one or more of the indicators under Sections 39.051(b)(1) through (7) [~~(6)~~] of one or more campuses in a district, the agency may conduct an on-site evaluation of those campuses only.

SECTION 17. Subsections (d) and (j), Section 39.023, Education Code, are repealed.

SECTION 18. The commissioner of education shall adopt rules for the implementation of Section 39.023, Education Code, as amended by this Act. The commissioner's rules must provide that:

(1) notwithstanding Section 39.051, Education Code, as amended by this Act, for the 2000-2001 and 2001-2002 school years, the Texas Education Agency may include the results of student performance on the end-of-course assessment instrument in Algebra I under Subsection (d), Section 39.023, Education Code, as that section existed before repeal by this Act, in evaluating the performance of school districts, campuses, and open-enrollment charter schools under Subchapter D, Chapter 39, Education Code;

(2) except as provided by Subdivision (4) of this section, not later than the 2002-2003 school year, the Texas Education Agency shall administer each assessment instrument added by this Act;

(3) except as provided by Subdivision (5) of this section, not later than the 2004-2005 school year, the Texas Education Agency shall include the results of student performance on each assessment instrument added by this Act in evaluating

the performance of school districts, campuses, and open-enrollment charter schools under Subchapter D, Chapter 39, Education Code;

(4) not later than the 2004-2005 school year, the Texas Education Agency shall administer assessment instruments under Subsection (b), Section 39.023, Education Code, that correspond to the following assessment instruments required under Subsection (a), Section 39.023, Education Code, as amended by this Act:

(A) the mathematics assessment instrument administered in grades nine and 10;

(B) the reading assessment instrument administered in grade nine; and

(C) the English language arts assessment instrument administered in grade 10;

(5) not later than the 2006-2007 school year, the Texas Education Agency shall include the results of student performance on each assessment instrument described by Subdivision (4) of this section in evaluating the performance of school districts, campuses, and open-enrollment charter schools under Subchapter D, Chapter 39, Education Code; and

(6) pending the introduction, as provided by Subdivision (2) of this section, of any assessment instrument added by this Act:

(A) the Texas Education Agency shall administer each appropriate assessment instrument under Section 39.023, Education Code, as that section existed before amendment by this Act;

(B) a student who performs satisfactorily on the end-of-course assessment instruments specified by Section 39.025, Education Code, as that section existed before amendment by this Act, is entitled to receive a high school diploma if the student completes all other requirements for high school graduation; and

(C) the former law is continued in effect for the purposes provided by this subdivision.

SECTION 19. (a) The commissioner of education shall conduct a study to determine the effectiveness of changes to Subchapter B, Chapter 39, Education Code, as amended by this Act. This study shall include but not be limited to evaluation of the following:

(1) the performance of minority students on assessments added by this Act, including changes in the performance gap between minority and nonminority students;

(2) the performance of students on assessments added by this article as compared to performance on national assessments;

(3) the availability and utility of data on the academic performance of secondary students; and

(4) the effect of the additional assessments on the dropout rate.

(b) Not later than December 1, 2006, the commissioner of education shall report the results of the study to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of the standing committee in each house of the legislature with primary jurisdiction over public education.

SECTION 20. This Act takes effect September 1, 1999.

SECTION 21. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 2

Amend **CSSB 103** as follows:

(1) In SECTION 3 of the bill, in Section 39.022, Education Code (House Committee Printing, page 2, line 14), strike "primarily performance-based" and substitute "knowledge- and skills-based [~~primarily performance based~~]".

(2) In SECTION 4 of the bill, in the introductory language (House Committee Printing, page 2, line 20), strike "(a), (c)" and substitute "(a)-(c)".

(3) In SECTION 4 of the bill, in Subsection (a), Section 39.023, Education Code (House Committee Printing, page 2, line 23), strike "competencies" and substitute "essential knowledge and skills [~~competencies~~]".

(4) In SECTION 4 of the bill, strike proposed Subdivisions (1), (2), and (3), Subsection (a), Section 39.023, Education Code (House Committee Printing, page 2, line 27, through page 3, lines 1-3), and substitute the following:

(1) mathematics ability, annually in grades three through seven without the aid of technology and in grades eight through eleven with the aid of technology on any assessment instruments that include algebra;

(2) reading ability [~~and mathematics~~], annually in grades three through nine [~~eight~~];

(3) [~~(2)~~] writing, including spelling and grammar, in grades four and seven [~~eight~~];

(5) In SECTION 4 of the bill, between Subsections (a) and (c), Section 39.023, Education Code (House Committee Printing, page 3, between lines 7 and 8), insert the following:

(b) The agency shall develop or adopt appropriate criterion-referenced assessment instruments to be administered to each student in a special education program under Subchapter A, Chapter 29, who receives instruction in the essential knowledge and skills identified under Section 28.002 but for whom the assessment instruments adopted under Subsection (a), even with allowable modifications, would not provide an appropriate measure of student achievement, as determined by the student's admission, review, and dismissal committee. The assessment instruments required under this subsection must assess essential knowledge and skills [~~competencies~~] and growth in reading, mathematics, and writing. A student's admission, review, and dismissal committee shall determine whether any allowable modification is necessary in administering to the student an assessment instrument required under this subsection. The assessment instruments required under this subsection shall be administered on the same schedule as the assessment instruments administered under Subsection (a).

(6) In SECTION 4 of the bill, in Subsection (c), Section 39.023, Education Code (House Committee Printing, page 3, line 10), strike "competencies" and substitute "essential knowledge and skills [~~competencies~~]".

(7) In SECTION 4 of the bill, in Subsection (c), Section 39.023, Education Code (House committee printing, page 3, line 12), between "geometry" and the period, insert "with the aid of technology".

(8) In SECTION 4 of the bill, in Subsection (c), Section 39.023, Education Code (House Committee Printing, page 3, line 14), strike "writing competencies" and substitute "essential knowledge and skills in writing [~~competencies~~]".

(9) Between SECTION 18 and SECTION 19 of the bill (House Committee Printing, page 13, between lines 19 and 20), insert the following SECTION and renumber the subsequent SECTIONS of the bill accordingly:

SECTION 19. The portion of Subdivision (1), Subsection (a), Section 39.023, Education Code, as amended by this Act, that requires assessment of mathematics computation skills without the aid of technology applies beginning with the 2004-2005 school year.

Floor Amendment No. 3

Amend the Shields amendment to **CSSB 103** by striking Subdivision (9) of the amendment (Shields amendment, page 2, line 28, through page 3, line 4).

Floor Amendment No. 4

Amend the Shields amendment to **CSSB 103** on page 1, lines 17 and 21, by striking "ability" each time it appears.

Floor Amendment No. 7

Amend **CSSB 103** as follows:

(1) In SECTION 4 of the bill, strike the introductory language (House Committee Report, page 2, lines 20 and 21), and substitute the following:

SECTION 4. Section 39.023, Education Code, is amended by amending Subsections (a), (c), (e), and (g) and adding Subsections (l) and (m) to read as follows:

(2) In SECTION 4 of the bill, in amended Subsection (a), Section 39.023, Education Code (House Committee Report, page 2, line 22), between "adopt" and "appropriate", insert "or develop".

(3) In SECTION 4 of the bill, in amended Subsection (a), Section 39.023, Education Code (House Committee Report, page 2, line 25), between "Subsection (b)" and "or exempted", insert "or (l)".

(4) In SECTION 4 of the bill, in amended Subsection 39.023(e), Education Code (House Committee Report, page 4, line 11), strike "or (c)[~~, or (d)~~]" and substitute "(c), or (l) [~~(d)~~]".

(5) In SECTION 4 of the bill, immediately preceding SECTION 5 of the bill (House Committee Report, page 5, between lines 1 and 2), insert the following:

(l) The agency shall adopt rules for the administration of the assessment instruments adopted under Subsection (a) in Spanish to students of limited English proficiency, as defined by Section 29.052, and whose primary language is Spanish. The language proficiency assessment committee established under Section 29.063 shall determine which students are administered assessment instruments in Spanish under this subsection. Each student of limited English proficiency whose primary language is Spanish, other than a student to whom Subsection (b) applies, shall be assessed using assessment instruments in Spanish under this subsection or assessment instruments in English under Subsection (a).

(m) The agency shall initially release, under Subsection (e), the questions and answer key to each assessment instrument administered under Subsection (l) after the last administration of an assessment instrument in the third school year in which the instrument is administered. This subsection expires September 1, 2005.

(6) In SECTION 5 of the bill (House Committee Report, page 5, lines 2 and 3), strike the introductory language and substitute:

SECTION 5. Subsections (a) and (b), Section 39.024, Education Code, are amended to read as follows:

(7) In SECTION 5 of the bill, immediately following Subsection (a), Section 39.024, Education Code (House Committee Report, page 5, between lines 11 and 12), insert the following:

(b) Each school district shall offer an intensive program of instruction for students who did not perform satisfactorily on an assessment instrument administered under this subchapter. The intensive programs for students who did not perform satisfactorily on an assessment instrument under Section 39.023(a), [~~or~~] (c), or (l) shall be designed to enable those [~~the~~] students to be performing at grade level at the conclusion of the next regular school term or to attain a standard of annual growth specified by the agency. The intensive programs for students who did not perform satisfactorily on an assessment instrument under Section 39.023(b) shall be designed by each student's admission, review, and dismissal committee to enable the student to attain a standard of annual growth on the basis of the student's individualized education program.

(8) Strike SECTION 8 of the bill (House Committee Report, page 6, lines 6 through 14), and substitute the following:

SECTION 8. Section 39.027, Education Code, is amended by amending Subsection (a), (b), and (e) and adding Subsection (f) to read as follows:

(a) A student may be exempted from the administration of an assessment instrument under:

(1) Section 39.023(a) or (b) if the student is eligible for a special education program under Section 29.003 and the student's individualized education program does not include instruction in the essential knowledge and skills under Section 28.002 at any grade level;

(2) Section 39.023(c) or (d) if the student is eligible for a special education program under Section 29.003 and:

(A) the student's individualized education program does not include instruction in the essential knowledge and skills under Section 28.002 at any grade level; or

(B) the assessment instrument, even with allowable modifications, would not provide an appropriate measure of the student's achievement as determined by the student's admission, review, and dismissal committee; or

(3) Section 39.023 if the student is of limited English proficiency, as defined by Section 29.052, and has a primary language other than Spanish.

(b) The agency [~~State Board of Education~~] shall adopt rules under which a dyslexic student who is not exempt under Subsection (a) may use procedures including oral examinations if appropriate or may be allowed additional time or the materials or technology necessary for the student to demonstrate the student's mastery of the competencies the assessment instruments are designed to measure.

(e) The commissioner shall develop an assessment system that shall be used for evaluating the academic progress, including reading proficiency in English, of all students of limited English proficiency, as defined by Section 29.052. The performance of students on the assessment system developed under this subsection of students to whom Subsection (a)(3) applies shall be included in the academic excellence indicator system under Section 39.051, the campus report card under Section 39.052, and the performance report under Section 39.053. The agency shall compile data on the performance under that assessment system of students of limited English proficiency whose primary language is Spanish, and the performance of those

students shall be included in the campus report card under Section 39.052 and the performance report under Section 39.053.

(f) In this section, "average daily attendance" is computed in the manner provided by Section 42.005.

(9) In SECTION 13 of the bill, in amended Subdivision (1), Subsection (b), Section 39.051, Education Code (House Committee Report, page 8, line 26), strike "Sections 39.023(a) and (c)" and substitute "Sections 39.023(a), [and] (c), and (l)".

(10) Strike SECTION 17 of the bill (House Committee Report, page 11, lines 19 and 20) and substitute the following:

SECTION 17. The following provisions of the Education Code are repealed:

(1) Subdivision (33), Subsection (b), Section 7.055; and

(2) Subsections (d) and (j), Section 39.023.

(11) Insert the following appropriately numbered new SECTION and renumber subsequent SECTIONS of the bill accordingly:

SECTION ___. (a) The Texas Education Agency shall administer assessment instruments in accordance with rules adopted under Subsection (l), Section 39.023, Education Code, as added by this Act for students in:

(1) grades three through six not later than the 1999-2000 school year; and

(2) grades seven and eight not later than the 2002-2003 school year.

(b) The performance of students under an assessment instrument prescribed under Section 39.023(l), Education Code, as added by this Act, shall be included in the accountability system as provided by Section 39.051(b), Education Code, as amended by this Act for students in:

(1) grades three through six not later than the 1999-2000 school year; and

(2) grades seven and eight not later than the 2003-2004 school year.

(c) Section 39.027(a)(3), Education Code, as amended by this Act, applies to students in:

(1) grades three through six beginning with the 1999-2000 school year; and

(2) grades seven and eight beginning with the 2002-2003 school year.

Floor Amendment No. 9

Amend **CSSB 103** in SECTION 4 of the bill, amended Section 39.023(c), Education Code (house committee report, page 3, lines 14-15), by striking "The social studies section must include United States history." and substituting "The social studies section must include early American and United States history.".

Floor Amendment No. 11

Amend **CSSB 103** as follows:

In SECTION 13 of the bill (House Committee Printing), amend Section 39.051(b) on page 9, line 22, by inserting the following after "subchapter;" and renumbering the subsequent sections accordingly:

(9) any disparity between economically disadvantaged students and all other students in performance on assessment instruments administered under Subchapter B, Chapter 39;

Floor Amendment No. 12

Amend **CSSB 103** in SECTION 13 of the bill, in amended Subsection (d), Section 39.051, Education Code (House Committee Report, page 10, line 1), by inserting the following after the period:

In defining exemplary, recognized, and unacceptable performance for the indicators under Subsections (b)(2) and (3), the commissioner may not consider as a dropout or as a student who has failed to attend school a student whose failure to attend school results from:

(1) the student's expulsion under Section 37.007; and

(2) as applicable:

(A) adjudication as having engaged in delinquent conduct or conduct indicating a need for supervision, as defined by Section 51.03, Family Code; or

(B) conviction of and sentencing for an offense under the Penal Code.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 103** on third reading, SECTION 4 by striking subsection (m) and substituting the following:

(m) No entity that holds a contract or subcontract for the statewide academic skills assessment instruments in this state shall, during the term of such contract, engage in written or publicly broadcast advertising of that contract in connection with promoting its textbooks.

The amendments were read.

Senator Bivins moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **SB 103** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Bivins, Chair; Ratliff, Armbrister, Cain, and Sibley.

SESSION TO CONSIDER EXECUTIVE APPOINTMENTS

The President announced the time had arrived to consider the executive appointments to agencies, boards, and commissions. Notice of submission of these names for consideration was given yesterday by Senator Wentworth.

Senator Wentworth moved confirmation of the nominees reported yesterday by the Committee on Nominations.

The President asked if there were requests to sever nominees.

There were no requests offered.

NOMINEES CONFIRMED

The following nominees as reported by the Committee on Nominations were confirmed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

Members, Texas Board of Physical Therapy Examiners: Mark George Cowart, Ector County; Mary R. Daulong, Harris County; Cynthia Fisher, El Paso County.

SENATE RESOLUTION 1143

Senator Gallegos offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 76th Legislature, Regular Session, 1999, That Senate Rule 12.03 is suspended, as provided by Senate Rule 12.08, to enable the conference committee appointed to resolve the differences between the house and senate versions of **HB 3799**, relating to the creation of the East Downtown Management District, providing authority to impose a tax and issue bonds, to consider and take actions on the following matters:

(1) Senate Rule 12.03(2) is suspended to permit the committee to omit the phrase "multiunit residential property" from the text of Section 376.320(a), Local Government Code, as added by SECTION 1 of the bill, changing the subsection to read as follows:

(a) The district may not impose a tax, impact fee, or assessment on a residential property or condominium.

Explanation: This change is necessary to change the types of property that are subject to an exemption.

(2) Senate Rule 12.03(2) is suspended to permit the committee to omit Section 376.324(d)(4), Local Government Code, as added by SECTION 1 of the bill, which reads as follows:

(4) participate with other entities.

Explanation: This change is necessary to delete the remainder of Section 376.324, Local Government Code, which corrects an inadvertent error in the senate committee amendment.

(3) Senate Rule 12.03(1) is suspended to permit the committee to change the text of SECTION 3 of the bill to read as follows:

SECTION 3. Notwithstanding Section 376.309, Local Government Code, as added by this Act:

(1) the initial board of directors of the East Downtown Management District consists of:

Pos. No.	Name of Director
1	Alfred H. Bennett
2	Charlie Chea
3	Peggy Foreman
4	Sean Gorman
5	Alan Gover
6	Tri La
7	Dan Nip
8	Grant Martin
9	Andy Moran
10	Bill Chu
11	Bob Eury
12	Wayne Galt
13	George Strong
14	Ringo Kwan

15 Stephen Barth
16 Harold A. Odom, III
17 Roger Russel; and

(2) of the initial board, members in positions 1-9 serve terms that expire June 1, 2003, and members in positions 10-17 serve terms that expire June 1, 2001.

Explanation: This change is necessary to change the names of two of the initial directors.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

SENATE RESOLUTION 1152

Senator West offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 76th Legislature, Regular Session, 1999, That Senate Rule 12.03 be suspended, as provided by Senate Rule 12.08, to enable the conference committee appointed to resolve the differences between the house and senate versions of **SB 1423**, relating to providing supplemental financial assistance and services to certain grandparents, to consider and take action on the following matter:

Senate Rules 12.03(1), (2), and (4) are suspended to permit the committee to amend Section 1 of the bill to read as follows:

SECTION 1. Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.0041 to read as follows:

Sec. 31.0041. SUPPLEMENTAL FINANCIAL ASSISTANCE FOR CERTAIN PERSONS. (a) To the extent funds are appropriated for this purpose, the department may provide supplemental financial assistance in addition to the amount of financial assistance granted for the support of a dependent child under Section 31.003 to a person who:

(1) is 50 years of age or older;

(2) is the grandparent of the dependent child, as defined by Section 31.002, who lives at the person's residence;

(3) is the primary caretaker of the dependent child;

(4) has a family income that is at or below 100 percent of the federal poverty level; and

(5) does not have resources that exceed the amount allowed for financial assistance under this chapter.

(b) Supplemental financial assistance provided to a person under this section may include one or more cash payments, not to exceed a total of $1,000, after determination of eligibility for supplemental financial assistance under this section.

(c) The department shall inform an applicant for financial assistance under this chapter who meets the eligibility requirements under Subsection (a) of the availability of supplemental financial assistance.

(d) The department shall maintain complete records and compile statistics regarding the number of households that receive supplemental financial assistance under this section.

(e) After a person receives supplemental financial assistance under Subsection (b) on behalf of a dependent child, no other person is eligible under Subsection (a) to receive supplemental financial assistance on behalf of that child.

Explanation: This amendment is necessary to limit eligibility for supplemental financial assistance provided by Section 31.0041, Human Resources Code, as added by the bill, and to allow the Texas Department of Human Services to provide supplemental financial assistance to the extent funds are appropriated for that purpose.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

SENATE RESOLUTION 1158

Senator Ratliff offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 76th Legislature, Regular Session, 1999, 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 **SB 177**, relating to codification of certain provisions in the General Appropriations Act that authorize, restrict, or prohibit expenditures by public entities, to consider and take action on the following matter:

Senate Rule 12.03(4) is suspended to permit the committee to add a new section to the bill to read as follows:

SECTION ___. Subchapter F, Chapter 2054, Government Code, is amended by adding Section 2054.1185 to read as follows:

Sec. 2054.1185. DELAY OF TECHNOLOGY INITIATIVE. (a) A state agency may request permission from the Legislative Budget Board and the budget division of the governor's office to delay implementation of a technology initiative, including a major information resources project as defined by Section 2054.118, if the implementation would significantly interfere with the state agency's ability to prepare adequately for the millennium date change and its attendant problems.

(b) A request for permission for a delay must be submitted in writing to the Legislative Budget Board and the budget division of the governor's office. Those entities may require the requesting state agency to provide any information the entities consider necessary for the proper evaluation of the request and may require the department or any other state agency to assist in evaluating the request.

(c) If the Legislative Budget Board and the budget division of the governor's office determine that a state agency has provided sufficient evidence of a need for a delay in implementation of a technology initiative, the agency shall be notified in writing of the determination and shall be permitted to delay implementation for the time specified by the Legislative Budget Board and the budget division of the governor's office.

Explanation: This addition is necessary to ensure computer compatibility with the millennium date change.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

SENATE RESOLUTION 1141

Senator Carona offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 76th Legislature, Regular Session, 1999, 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 610**, relating to health care providers under certain health benefit plans, to consider and take action on the following matters:

1. Senate Rule 12.03(1) is suspended to permit the committee to change the text of Section 18B(d), Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code), in SECTION 1 of the bill, so that the subsection reads as follows:

(d) If a prescription benefit claim is electronically adjudicated and electronically paid, and the health maintenance organization or its designated agent authorizes treatment, the claim must be paid not later than the 21st day after the treatment is authorized.

Explanation: This change is necessary to clarify that the subsection applies to prescription benefit claims that are both electronically adjudicated and paid and that payment of the claims must be made not later than the 21st day after a specified date.

2. Senate Rule 12.03(1) is suspended to permit the committee to change the text of Section 3A(d), Article 3.70-3C, Insurance Code, as added by Chapter 1024, Acts of the 75th Legislature, Regular Session, 1997, in SECTION 2 of the bill, so that the subsection reads as follows:

(d) If a prescription benefit claim is electronically adjudicated and electronically paid, and the preferred provider or its designated agent authorizes treatment, the claim must be paid not later than the 21st day after the treatment is authorized.

Explanation: This change is necessary to clarify that the subsection applies to prescription benefit claims that are both electronically adjudicated and paid and that payment of the claims must be made not later than the 21st day after a specified date.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

(Senator Fraser in Chair)

SENATE RESOLUTION 1153

Senator Ellis offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 76th Legislature, Regular Session, 1999, 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 between the house and senate versions of **SB 1230**, relating to the procedures governing the prosecution and administration of misdemeanor offenses in the jurisdiction of the justice and municipal courts, to consider and take action on the following matters:

(1) Senate Rules 12.03(1) and (4) are suspended to permit the committee to change text in and add text to Article 45.019, Code of Criminal Procedure, in SECTION 15 of the bill, so that the article reads as follows:

Art. 45.019 [~~45.17~~]. REQUISITES OF [~~WHAT~~] COMPLAINT [~~MUST STATE~~]. (a) A [~~Such~~] complaint is sufficient, without regard to its form, if it substantially satisfies the following requisites [~~shall state~~]:

(1) it must be in writing;

(2) it must commence "In the name and by the authority of the State of Texas";

(3) it must state the [~~1. The~~] name of the accused, if known, or [~~and~~] if unknown, must include a reasonably definite description of the accused [~~shall describe him as accurately as practicable~~];

(4) it must show that the accused has committed an offense against the law of this state, or state that the affiant has good reason to believe and does believe that the accused has committed an offense against the law of this state [~~2. The offense with which he is charged, in plain and intelligible words~~];

(5) it must state the date the offense was committed as definitely as the affiant is able to provide;

(6) it must bear the signature or mark of the affiant; and

(7) it must conclude with the words "Against the peace and dignity of the State" and, if the offense charged is an offense only under a municipal ordinance, it may also conclude with the words "Contrary to the said ordinance".

(b) A complaint filed in justice court must allege that [~~3. That~~] the offense was committed in the county in which the complaint is made[~~; and~~

[~~4. It must show, from the date of the offense stated therein, that the offense is not barred by limitation~~].

(c) A complaint filed in municipal court must allege that the offense was committed in the territorial limits of the municipality in which the complaint is made.

(d) A complaint may be sworn to before any officer authorized to administer oaths.

(e) A complaint in municipal court may be sworn to before:

(1) the municipal judge;

(2) the clerk of the court or a deputy clerk;

(3) the city secretary; or

(4) the city attorney or a deputy city attorney.

(f) If the defendant does not object to a defect, error, or irregularity of form or substance in a charging instrument before the date on which the trial on the merits commences, the defendant waives and forfeits the right to object to the defect, error, or irregularity. Nothing in this article prohibits a trial court from requiring that an objection to a charging instrument be made at an earlier time.

Explanation: These changes are necessary to clarify the requisites of a criminal complaint filed in a justice or municipal court and to apply Article 1.14(b), Code of Criminal Procedure, to justice and municipal courts.

(2) Senate Rule 12.03(1) is suspended to permit the committee to change the text of Article 45.021, Code of Criminal Procedure, in SECTION 17 of the bill, so that the article reads as follows:

Art. 45.021 [~~45.33~~]. PLEADINGS [~~PLEADING IS ORAL~~]. All pleading of the defendant in justice or municipal court may be oral or in writing as the court [~~defendant~~] may direct [~~elect~~]. [~~The justice shall note upon his docket the plea offered.~~]

Explanation: This change is necessary to allow a justice or municipal court to require that pleadings be in writing.

(3) Senate Rule 12.03(1) is suspended to permit the committee to change the text of Article 45.033, Code of Criminal Procedure, in SECTION 30 of the bill, so that the article reads as follows:

Art. 45.033. JURY CHARGE. The judge shall charge the jury. The charge may be made orally or in writing, except that the charge shall be made in writing if required by law.

Explanation: This change is necessary to clarify the meaning of Article 45.033, Code of Criminal Procedure, as added by **SB 1230**.

(4) Senate Rule 12.03(1) is suspended to permit the committee to change the text of Article 45.046, Code of Criminal Procedure, in SECTION 45 of the bill, so that the article reads as follows:

Art. 45.046 [~~45.52~~]. COMMITMENT [~~COLLECTION OF FINES~~]. (a) When a judgment and sentence have been entered [~~rendered~~] against a defendant [~~for a fine and costs~~] and the defendant [~~he~~] defaults in the discharge of the judgment [~~payment~~], the judge [~~justice~~] may order the defendant confined [~~him imprisoned~~] in jail until discharged by law if the judge determines that:

(1) the defendant intentionally failed to make a good faith effort to discharge the judgment; or

(2) the defendant is not indigent.

(b) A certified copy of the judgment, sentence, and order is sufficient to authorize such confinement [~~imprisonment~~].

[~~(b) The justice may order the fine and costs collected by execution against the defendant's property in the same manner as a judgment in a civil suit.~~]

Explanation: This change is necessary to clarify the meaning of Article 45.046, Code of Criminal Procedure, as amended by **SB 1230**.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

SENATE BILL 840 WITH HOUSE AMENDMENT

Senator West called **SB 840** 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 840** as follows:

(1) In SECTION 2 of the bill (House Committee Report, page 7, lines 1-16), strike amended Section 4(a), Article 55.02, Code of Criminal Procedure, and substitute the following:

Sec. 4. (a) If the state establishes that the person who is the subject of an expunction order [~~the petitioner~~] is still subject to conviction for an offense arising out of the transaction for which the person [~~he~~] was arrested because the statute of limitations has not run and there is reasonable cause to believe that the state may proceed against the person [~~him~~] for the offense, the court may provide in its order that

the law enforcement agency and the prosecuting attorney responsible for investigating the offense may retain any records and files that are necessary to the investigation. In the case of a person who is the subject of an expunction order on the basis of an acquittal, the court may provide in the expunction order that the law enforcement agency and the prosecuting attorney retain records and files if:

(1) the records and files are necessary to conduct a subsequent investigation and prosecution of a person other than the person who is the subject of the expunction order; or

(2) the state establishes that the records and files are necessary for use in:

(A) another criminal case or matter, including a prosecution, motion to adjudicate or revoke community supervision, parole revocation hearing, mandatory supervision revocation hearing, punishment hearing, or bond hearing; or

(B) a civil case or matter, including a civil suit or suit for possession of or access to a child.

(2) In SECTION 2 of the bill, in amended Section 4(b), Article 55.02, Code of Criminal Procedure (House Committee Report, page 7, lines 20-22), strike "there is a subsequent investigation and prosecution of a person other than the person who is the subject of the expunction order" and substitute "the court provides for the retention of records and files under Subsection (a)".

(3) In SECTION 2 of the bill, in amended Section 5(c), Article 55.02, Code of Criminal Procedure (House Committee Report, page 8, lines 18-20), strike "there is a subsequent investigation and prosecution of a person other than the person who is the subject of the expunction order" and substitute "the court provides for the retention of records and files under Section (4)(a)".

The amendment was read.

Senator West moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 840** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators West, Chair; Duncan, Ellis, Whitmire, and Shapiro.

CONFERENCE COMMITTEE ON HOUSE BILL 3029

Senator Brown 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 3029** and moved that the request be granted.

The motion prevailed.

The Presiding Officer, Senator Fraser in Chair, asked if there were any motions to instruct the conference committee on **HB 3029** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brown, Chair; Bivins, Sibley, Fraser, and Jackson.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 839 ADOPTED

Senator West called from the President's table the Conference Committee Report on **SB 839**. The Conference Committee Report was filed with the Senate on Tuesday, May 25, 1999.

On motion of Senator West, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 746

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 746** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 746** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators West, Chair; Ogden, Cain, Bernsen, and Harris.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 61 ADOPTED

Senator Madla called from the President's table the Conference Committee Report on **SB 61**. The Conference Committee Report was filed with the Senate on Monday, May 24, 1999.

On motion of Senator Madla, the Conference Committee Report was adopted by a viva voce vote.

RECORD OF VOTE

Senator Moncrief asked to be recorded as voting "Nay" on the adoption of the Conference Committee Report.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 801 ADOPTED

Senator Ellis called from the President's table the Conference Committee Report on **SB 801**. The Conference Committee Report was filed with the Senate on Monday, May 24, 1999.

On motion of Senator Ellis, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

CONFERENCE COMMITTEE ON HOUSE BILL 2821

Senator Cain 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 2821** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2821** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Cain, Chair; Wentworth, Sibley, Ogden, and West.

CONFERENCE COMMITTEE ON HOUSE BILL 1865

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 1865** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1865** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators West, Chair; Cain, Gallegos, Shapleigh, and Ellis.

CONFERENCE COMMITTEE ON HOUSE BILL 1622

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 1622** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1622** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris, Chair; Madla, Jackson, Ellis, and Brown.

CONFERENCE COMMITTEE ON HOUSE BILL 3182

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 3182** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3182** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris, Chair; Madla, Lindsay, Shapiro, and Lucio.

CONFERENCE COMMITTEE ON HOUSE BILL 597

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 597** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 597** before appointment.

There were no motions offered.

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 781 ADOPTED

Senator Madla called from the President's table the Conference Committee Report on **SB 781**. The Conference Committee Report was filed with the Senate on Monday, May 24, 1999.

On motion of Senator Madla, the Conference Committee Report was adopted by a viva voce vote.

SENATE BILL 230 WITH HOUSE AMENDMENT

Senator Ellis called **SB 230** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 230** in SECTION 1 of the bill (House Committee Printing, page 1, lines 9-10) by striking Section 62.0131(b), Government Code, as added by the bill and substituting the following:

(b) The model must include:

(1) the exemptions and restrictions governing jury service under Subchapter B; and

(2) the information under Chapter 122, Civil Practice and Remedies Code, relating to the duties of an employer with regard to an employee who is summoned for jury service.

The amendment was read.

Senator Ellis moved to concur in the House amendment to **SB 230**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 730 ADOPTED

Senator Madla called from the President's table the Conference Committee Report on **SB 730**. The Conference Committee Report was filed with the Senate on Monday, May 24, 1999.

On motion of Senator Madla, the Conference Committee Report was adopted by a viva voce vote.

SENATE BILL 441 WITH HOUSE AMENDMENTS

Senator Ellis called **SB 441** 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 441** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the application of the sales and use tax to certain services.

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

SECTION 1. Subchapter A, Chapter 151, Tax Code, is amended by adding Sections 151.00393 and 151.00394 to read as follows:

Sec. 151.00393. INTERNET. "Internet" means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, that comprise the interconnected worldwide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to the protocol, to communicate information of all kinds by wire or radio.

Sec. 151.00394. INTERNET ACCESS SERVICE. (a) "Internet access service" means a service that enables users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. The term does not include telecommunications services.

(b) "Internet access service" does not include and the exemption under Section 151.325 does not apply to any other taxable service listed in Section 151.0101(a) or 151.01011, unless the taxable service is provided in conjunction with and is merely incidental to the provision of Internet access service.

(c) On and after October 1, 1999, "Internet access service" is not included in the definitions of data processing services and information services.

SECTION 2. Section 151.0101(a), Tax Code, is amended to read as follows:

(a) "Taxable services" means:

(1) amusement services;

(2) cable television services;

(3) personal services;

(4) motor vehicle parking and storage services;

(5) the repair, remodeling, maintenance, and restoration of tangible personal property, except:

(A) aircraft;

(B) a ship, boat, or other vessel, other than:

(i) a taxable boat or motor as defined by Section 160.001;

(ii) a sports fishing boat; or

(iii) any other vessel used for pleasure;

(C) the repair, maintenance, and restoration of a motor vehicle; and

(D) the repair, maintenance, creation, and restoration of a computer program, including its development and modification, not sold by the person performing the repair, maintenance, creation, or restoration service;

(6) telecommunications services;

(7) credit reporting services;

(8) debt collection services;

(9) insurance services;

(10) [~~information services;~~

[~~(11)~~] real property services;

(11) [~~(12) data processing services;~~

[~~(13)~~] real property repair and remodeling;

(12) [~~(14)~~] security services;

(13) [~~and (15)~~] telephone answering services; and

(14) Internet access service.

SECTION 3. Subchapter A, Chapter 151, Tax Code, is amended by adding Section 151.01011 to read as follows:

Sec. 151.01011. CERTAIN TEMPORARY TAXABLE SERVICES. (a) "Taxable services" include information services and data processing services.

(b) This section expires October 1, 2003.

SECTION 4. Section 151.0103, Tax Code, is amended to read as follows:

Sec. 151.0103. TELECOMMUNICATIONS SERVICES. For the purposes of this title only, "telecommunications services" means the electronic or electrical transmission, conveyance, routing, or reception of sounds, signals, data, or information utilizing wires, cable, radio waves, microwaves, satellites, fiber optics, or any other method now in existence or that may be devised, including but not limited to long-distance telephone service. The term does not include:

(1) the storage of data or information for subsequent retrieval or the processing, or reception and processing, of data or information intended to change its form or content; [~~or~~]

(2) the sale or use of a telephone prepaid calling card; or

(3) Internet access service.

SECTION 5. Section 151.320(b), Tax Code, is amended to read as follows:

(b) "Magazine" means a publication that is usually paperbacked and sometimes illustrated, that appears at a regular interval, and that contains stories, articles, and essays by various writers and advertisements. [~~"Magazine" does not mean the publication of current information which is taxable pursuant to Section 151.0038 of this code as an "information service."~~]

SECTION 6. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.325 to read as follows:

Sec. 151.325. BASIC FEE FOR INTERNET ACCESS SERVICE. (a) The sale, use, or other consumption in this state of Internet access service is exempted from the taxes imposed by this chapter in an amount not to exceed the first $25 of a monthly charge.

(b) The exemption provided by this section applies without regard to:

(1) whether the Internet access service is bundled with another service, including any other taxable service listed in Section 151.0101(a) or 151.01011; or

(2) the billing period used by the service provider.

(c) The exemption in this section applies to the total sales price the service provider charges for Internet access to a purchaser, without regard to whether the service provider charges one lump-sum amount or separately bills the purchaser for each user.

SECTION 7. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.351 to read as follows:

Sec. 151.351. INFORMATION SERVICES AND DATA PROCESSING SERVICES. (a) Information services and data processing services are exempted from the taxes imposed by this chapter as follows:

(1) for services rendered on or after January 1, 2000, and before October 1, 2000, 20 percent of the value of the services is exempt;

(2) for services rendered on or after October 1, 2000, and before October 1, 2001, 40 percent of the value of the services is exempt;

(3) for services rendered on or after October 1, 2001, and before October 1, 2002, 60 percent of the value of the services is exempt; and

(4) for services rendered on or after October 1, 2002, and before October 1, 2003, 80 percent of the value of the services is exempt.

(b) This section expires October 1, 2003.

SECTION 8. Sections 151.0035 and 151.0038, Tax Code, are repealed.

SECTION 9. (a) Except as otherwise provided by this Act, this Act takes effect October 1, 1999.

(b) Sections 5 and 8 of this Act take effect October 1, 2003.

(c) The change in law made by this Act does not affect taxes imposed before the effective date of this Act, and the law in effect before the effective date of this Act is continued in effect for purposes of the liability for and collection of those taxes.

SECTION 10. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend **CSSB 441** as follows:

(1) In SECTION 1, in Section 151.00394(b), Tax Code, (page 1, line 23) strike "or 151.01011".

(2) In SECTION 2, strike Section 151.0101(a), Tax Code, (page 2, line 7 through page 3, line 9) and substitute a new Section 151.0101(a), Tax Code to read as follows:

(a) "Taxable services" means:

(1) amusement services;

(2) cable television services;

(3) personal services;

(4) motor vehicle parking and storage services;

(5) the repair, remodeling, maintenance, and restoration of tangible personal property, except:

(A) aircraft;

(B) a ship, boat, or other vessel, other than:

(i) a taxable boat or motor as defined by Section 160.001;

(ii) a sports fishing boat; or

(iii) any other vessel used for pleasure;

(C) the repair, maintenance, and restoration of a motor vehicle; and

(D) the repair, maintenance, creation, and restoration of a computer program, including its development and modification, not sold by the person performing the repair, maintenance, creation, or restoration service;

(6) telecommunications services;

(7) credit reporting services;

(8) debt collection services;

(9) insurance services;

(10) information services;

(11) real property services;

(12) data processing services;

(13) real property repair and remodeling;

(14) security services; [~~and~~]

(15) telephone answering services; and

(16) Internet access service.

(3) Strike SECTION 3 of the bill (page 3, lines 10-15).

(4) Strike SECTION 5 of the bill (page 4, lines 5-12).

(5) In SECTION 6, Section 151.325(b)(1), Tax Code, (page 4, line 23) strike "or 151.01011".

(6) Insert new SECTIONS 7, 8, 9, and 10 (page 5, between lines 2 and 3) to read as follows and renumber subsequent SECTIONS and references to SECTIONS appropriately:

SECTION 7. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.326 to read as follows:

Sec. 151.326. CLOTHING AND FOOTWEAR FOR LIMITED PERIOD. (a) The sale of an article of clothing or footwear designed to be worn on or about the human body is exempted from the taxes imposed by this chapter if:

(1) the sales price of the article is less than $100; and

(2) the sale takes place during a period beginning at 12:01 a.m. on the first Friday in August and ending at 12 midnight on the following Sunday.

(b) This section does not apply to:

(1) any special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed;

(2) accessories, including jewelry, handbags, luggage, umbrellas, wallets, watches, and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing; and

(3) the rental of clothing or footwear.

(c) On or after January 1, 2000, the governing body of a local taxing authority may repeal the application of this exemption in the manner provided by Chapter 326.

SECTION 8. Section 151.3111(b), Tax Code, is amended to read as follows:

(b) Subsection (a) of this section does not apply to the performance of a service on:

(1) tangible personal property that would be exempted solely because of the exempt status of the seller of the property;

(2) tangible personal property that is exempted solely because of the application of Section 151.303, 151.304, or 151.306 of this code;

(3) motor vehicles, trailers, or semitrailers as defined, taxed, or exempted by Chapter 152 of this code;

(4) a taxable boat or motor as defined by Section 160.001; [~~or~~]

(5) machinery and equipment with a purchase price greater than $50,000 used exclusively in a commercial timber operation as described by Section 151.3161(a); or

(6) tangible personal property exempt under Section 151.326.

SECTION 9. Subtitle C, Title 3, Tax Code, is amended by adding Chapter 326 to read as follows:

CHAPTER 326. STATE SALES AND USE TAX EXEMPTIONS IN RELATION TO LOCAL SALES AND USE TAXES

Sec. 326.001. APPLICABILITY. This chapter applies to local sales and use taxes administered and computed under this subtitle and to which this subtitle applies, including a tax imposed under:

(1) Chapter 285, 775, or 776, Health and Safety Code;

(2) Chapter 326, 334, 363, 377, or 383, Local Government Code;

(3) Chapter 451, 452, 453, or 457, Transportation Code; or

(4) the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes).

Sec. 326.002. STATE EXEMPTIONS. Notwithstanding any other law, an exemption to the state sales and use tax provided by Chapter 151 does not apply to a local sales and use tax to which this chapter applies if:

(1) the governing body of the local taxing authority repeals the exemption in the manner provided by Section 326.003; and

(2) the exemption provided by Chapter 151 specifically provides that the governing body of the local taxing authority may repeal the exemption in the manner provided by this chapter.

Sec. 326.003. REPEAL BY LOCAL TAXING AUTHORITY. (a) The governing body of a taxing authority may by a majority vote adopt an appropriate order, including an ordinance, to repeal the application of an exemption described by Section 326.002.

(b) The governing body must hold a public hearing before taking a vote.

(c) A taxing authority that has repealed the application of an exemption under this section may in the same manner reinstate the exemption.

(d) A vote of the governing body of a taxing authority repealing the application or reinstating the exemption must be entered in the minutes for the meeting. The secretary of the taxing authority shall send to the comptroller by certified or registered mail a copy of the order adopted under this section.

Sec. 326.004. EFFECTIVE DATE. The repeal of the application of the exemption or a reinstated exemption under Section 326.003 takes effect within the taxing authority on the first day of the first calendar quarter occurring after the

expiration of the first complete calendar quarter occurring after the date on which the comptroller receives a copy of the order adopted under that section.

SECTION 10. (a) The comptroller may adopt emergency rules for the implementation of Sections 7, 8, and 9 of this Act.

(b) Sections 7, 8, and 9 of this Act take effect on the first day of the first calendar quarter beginning on or after the date that they may take effect under Section 39, Article III, Texas Constitution.

(7) In SECTION 7 of the bill, Strike Section 151.351, Tax Code (page 5, lines 5-20) and substitute a new Section 151.351, Tax Code, to read as follows:

Sec. 151.351. INFORMATION SERVICES AND DATA PROCESSING SERVICES. There are exempted from the taxes imposed by this chapter 20 percent of the value of information services and data processing services.

(8) Insert a new appropriately numbered SECTION to read as follows:

SECTION ___. Section 151.313(a), Tax Code, is amended to read as follows:

(a) The following items are exempted from the taxes imposed by this chapter:

(1) a drug or medicine, other than insulin, if prescribed or dispensed for a human or animal by a licensed practitioner of the healing arts;

(2) insulin;

(3) a drug or medicine, without regard to whether it is prescribed or dispensed by a licensed practitioner of the healing arts, that is labeled with a national drug code issued by the federal Food and Drug Administration;

(4) a hypodermic syringe or needle;

(5) [~~(4)~~] a brace; hearing aid or audio loop; orthopedic, dental, or prosthetic device; ileostomy, colostomy, or ileal bladder appliance; or supplies or replacement parts for the listed items;

(6) [~~(5)~~] a therapeutic appliance, device, and any related supplies specifically designed for those products, if dispensed or prescribed by a licensed practitioner of the healing arts, when those items are purchased and used by an individual for whom the items listed in this subdivision were dispensed or prescribed;

(7) [~~(6)~~] corrective lens and necessary and related supplies, if dispensed or prescribed by an ophthalmologist or optometrist;

(8) [~~(7)~~] specialized printing or signalling equipment used by the deaf for the purpose of enabling the deaf to communicate through the use of an ordinary telephone and all materials, paper, and printing ribbons used in that equipment;

(9) [~~(8)~~] a braille wristwatch, braille writer, braille paper and braille electronic equipment that connects to computer equipment, and the necessary adaptive devices and adaptive computer software;

(10) [~~(9)~~] each of the following items if purchased for use by the blind to enable them to function more independently: a slate and stylus, print enlarger, light probe, magnifier, white cane, talking clock, large print terminal, talking terminal, or harness for guide dog; [~~and~~]

(11) [~~(10)~~] hospital beds; and

(12) blood glucose monitoring test strips.

Floor Amendment No. 2

Amend **CSSB 441** by adding the following appropriately numbered sections:

SECTION ___. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.327 to read as follows:

Sec. 151.327. BINGO EQUIPMENT. (a) Bingo equipment, devices, or supplies purchased by a fraternal, nonprofit, or veterans organization, religious society, or other authorized organization licensed to conduct a bingo game under Section 13, Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), are exempted from the taxes imposed by this chapter.

(b) For the purposes of this section, "bingo equipment," "fraternal organization," "nonprofit organization," "veterans organization," "religious society," "authorized organization," "bingo," and "game" have the meanings assigned by Section 2, Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes).

SECTION _____. The change in law made by Section 151.327, Tax Code applies only to a sale of bingo equipment, devices, or supplies that occurs on or after September 1, 2001. A sale of bingo equipment, devices, or supplies that occurred before September 1, 2001 is covered by the law in effect when the sale occurred, and that law is continued in effect for that purpose.

Floor Amendment No. 2 on Third Reading

Amend **CSSB 441** on third reading by amending the Oliveira amendment adopted on second reading by inserting new Items (9) - (11) to the amendment (page 8, after line 1) to read as follows:

(9) Strike existing SECTION 8 of the bill (page 5, lines 21-22).

(10) Strike existing SECTION 9(b) of the bill (page 5, lines 25-26) and reletter the subsequent subsection appropriately.

(11) In existing SECTION 10 of the bill, between "suspended" and the period (page 6, line 8), insert "and that this Act take effect and be in force according to its terms, and it so enacted".

Floor Amendment No. 3 on Third Reading

Amend **CSSB 441** on third reading by adding the following appropriately numbered section to the bill and renumbering existing sections of the bill accordingly:

SECTION ___. Section 151.302(c), Tax Code, is amended to read as follows:

(c) Internal or external wrapping, packing, and packaging supplies used by a person in wrapping, packing, or packaging tangible personal property or in the performance of a service for the purpose of furthering the sale of the tangible personal property or the service may not be purchased by the person for resale. A person may purchase for resale a hanger or material for covering a cleaned garment that is transferred to the customer as an integral part of a laundry or dry cleaning service.

Floor Amendment No. 4 on Third Reading

Amend **CSSB 441** on third reading by adding an appropriately number SECTION to read as follows and renumbering subsequent SECTIONS accordingly:

SECTION ___. Subchapter A, Chapter 111, Tax Code, is amended by adding Section 111.0023 to read as follows:

Sec. 111.0023. ADOPTION OF RULE THAT IMPOSES ADDITIONAL TAX. The comptroller may not adopt a rule or practice that extends the application of a state tax to a new class of persons, property, transactions, or other items unless the extension is specifically authorized by the legislature or required by federal law.

Floor Amendment No. 5 on Third Reading

Amend **CSSB 441**, on third reading, by inserting the following appropriately numbered SECTION to read as follows and renumbering subsequent SECTIONS accordingly:

SECTION ___. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.3185 to read as follows:

Sec. 151.3185. TAXABLE ITEMS SOLD OR USED BY CERTAIN AGRICULTURAL PROCESSORS. (a) In this section:

(1) "Agricultural processing" means an establishment primarily engaged in activities described in categories 2011-2099, 2211, 2231, or 3111-3199 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

(2) "Agricultural product" means an agricultural, horticultural, viticultural, or vegetable product, bees, honey, fish or other seafood, livestock, and poultry.

(3) "Economically distressed county" means a county with above state average unemployment and below state average per capita income.

(4) "Qualified agricultural processor" means an agricultural processor who engages in the activity of agricultural processing and meets the qualifications prescribed by Subsection (c).

(5) "Rural county" means a county with a population of less than 50,000.

(b) A taxable item purchased, leased, rented, stored, or used by the agricultural processing business of a qualified agricultural processor is exempted from the taxes imposed by this chapter.

(c) An agricultural processor qualifies for the exemption provided by this section only if the processor:

(1) establishes a new agricultural processing business in a rural county or economically distressed county or expands an existing agricultural processing business located in a rural county or economically distressed county; and

(2) makes a capital investment of not less than:

(A) $750,000 in establishing the business in the location described by Subdivision (1); or

(B) $100,000 in expanding the business in the location described by Subdivision (1).

(d) A qualified agricultural processor may claim the exemption provided by this section only until the second anniversary of the date on which the processor begins constructing or expanding a facility that is necessary or essential to the agricultural processing business described by Subsection (c) or enters into a lease for such a facility.

(e) A corporation must apply to the comptroller for the exemption provided by this section. The burden of establishing entitlement to the exemption is on the agricultural processor.

The amendments were read.

Senator Ellis moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 441** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ellis, Chair; Sibley, Ratliff, Fraser, and Duncan.

SENATE BILL 1615 WITH HOUSE AMENDMENTS

Senator Lucio called **SB 1615** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer, Senator Fraser in Chair, laid the bill and the House amendments before the Senate.

Floor Amendment No. 1

Amend **SB 1615** as follows:

(1) In SECTION 1 of the bill, in proposed Section 287.101, Health and Safety Code, between "DISSOLUTION." and "A district shall", insert "(a)" (House Committee Report, page 13, line 21).

(2) In SECTION 1 of the bill at the end of proposed Section 287.101, Health and Safety Code (House Committee Report, page 14, between lines 4 and 5), insert the following:

(b) The governing body of a county may adopt orders to terminate the contract with the district and end the county's participation in the district. On termination of the contract with the district, the district shall transfer to the county all unspent funds contributed by the county to the district and the land, buildings, improvements, equipment, and other assets acquired by the district that are located in the county. The termination of the contract by a county does not affect the operation of the district with respect to each other county or hospital district that created the district.

Floor Amendment No. 2

Amend **SB 1615** as follows:

(1) On page 3, line 13, House committee report, between "PURPOSE AND DUTIES." and "A health services", insert "(a)".

(2) Between page 4, line 6, and page 4, line 7, House committee report, insert the following:

(c) A health services district may not:

(1) establish, conduct, or maintain an institution as defined by Section 242.002; or

(2) establish or operate a personal care facility as defined by Section 247.002.

Floor Amendment No. 1 on Third Reading

Amend **SB 1615** on third reading by striking the text of second reading amendment n o. 2 and substituting the following:

Amend **SB 1615** as follows:

(1) In SECTION 1 of the bill, at the end of proposed Subsection (b), Section 287.023, Health and Safety Code (House Committee Report, page 4, between lines 6 and 7), insert the following:

(c) A health services district may not:

(1) establish, conduct, or maintain an institution as defined by Section 242.002; or

(2) establish or operate a personal care facility as defined by Section 247.002.

The amendments were read.

Senator Lucio moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1615** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Lucio, Chair; Truan, Brown, Zaffirini, and Wentworth.

SENATE BILL 100 WITH HOUSE AMENDMENT

Senator Carona called **SB 100** 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 100** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the design of a quarter dollar coin commemorating the State of Texas.

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

SECTION 1. Subchapter C, Chapter 401, Government Code, is amended by adding Section 401.033 to read as follows:

Sec. 401.033. DESIGN FOR QUARTER DOLLAR COIN COMMEMORATING TEXAS. (a) The governor is designated as the state official authorized to consult with the United States secretary of the treasury under 31 U.S.C. Section 5112(l) relating to the design for a quarter dollar coin commemorating this state to be issued under that section.

(b) The governor may establish an advisory committee as the governor considers appropriate to assist the governor in carrying out this section, including formulating, soliciting, reviewing, or recommending a design or designs for the coin. If the governor establishes the advisory committee, the presiding officer of the Committee on State, Federal, and International Relations of the house of representatives serves as a member of the advisory committee by virtue of that position. The governor may appoint other persons to the advisory committee as the governor considers appropriate. Members of the advisory committee are not entitled to reimbursement for expenses incurred in the performance of advisory committee duties.

(c) This section expires January 1, 2005.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 100**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna

SENATE BILL 396 WITH HOUSE AMENDMENT

Senator Moncrief called **SB 396** 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 396** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to authorizing the conveyance of certain state property located in Howard and Tarrant counties.

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

SECTION 1. (a) The Texas Department of Mental Health and Mental Retardation may convey, on behalf of the state, all or any portion of the state's interest in the real property, including the land and all improvements affixed to the land, described by Subsection (e) of this section to the West Texas Centers for Mental Health and Mental Retardation for use as a facility to provide community-based mental health and mental retardation services.

(b) The reservations contained in the deed to the state recorded at volume 642, page 480, of the Deed Records of Howard County run with the land and are binding on the West Texas Centers for Mental Health and Mental Retardation.

(c) The West Texas Centers for Mental Health and Mental Retardation may use the property conveyed under this section only for the purpose of providing community-based mental health and mental retardation services. If the West Texas Centers for Mental Health and Mental Retardation discontinues using the property for the purpose of providing community-based mental health and mental retardation services for more than 180 continuous days, ownership of the property automatically reverts to the Texas Department of Mental Health and Mental Retardation.

(d) The Texas Department of Mental Health and Mental Retardation shall convey the property by an appropriate instrument of conveyance. The instrument of conveyance must include a provision that:

(1) indicates that the reservations described by Subsection (b) of this section are binding on the West Texas Centers for Mental Health and Mental Retardation;

(2) requires the West Texas Centers for Mental Health and Mental Retardation to use the property only for the purpose of providing community-based mental health and mental retardation services; and

(3) indicates that ownership of the property automatically reverts to the Texas Department of Mental Health and Mental Retardation if the West Texas Centers for Mental Health and Mental Retardation discontinues using the property for the purpose of providing community-based mental health and mental retardation services for more than 180 continuous days.

(e) The real property referred to in Subsection (a) of this section consists of an administrative office building and adjacent parking lot described as Lots 5, 6, and 7, Block 19, Original Town Site, Big Spring, Howard County, Texas, and further described as a +/- 0.48 acre tract in a deed to the state recorded at volume 642, page 480, of the Deed Records of Howard County.

SECTION 2. (a) The Texas Department of Mental Health and Mental Retardation may convey, on behalf of the state, all or any portion of the state's interest in the real property, including the land and all improvements affixed to the land, described by Subsection (f) of this section to Tarrant County Mental Health and Mental Retardation Services for use as a facility to provide community-based mental health and mental retardation services or services for the treatment of alcohol and substance abuse.

(b) The conditions precedent and possibility of reverter established in the deed to the state recorded at volume 8528, page 2057, of the Deed Records of Tarrant County run with the land and are binding on Tarrant County Mental Health and Mental Retardation Services.

(c) Tarrant County Mental Health and Mental Retardation Services may use the property conveyed under this section only for the purpose of providing community-based mental health and mental retardation services or services for the treatment of alcohol and substance abuse. Tarrant County Mental Health and Mental Retardation Services shall immediately notify the Texas Department of Mental Health and Mental Retardation if Tarrant County Mental Health and Mental Retardation Services determines that the property will not be used to provide the services described by this subsection for more than 60 continuous days.

(d) Tarrant County Mental Health and Mental Retardation Services may enter into a binding agreement to sell or otherwise dispose of the property if Tarrant County Mental Health and Mental Retardation Services:

(1) provides notice of the intent to sell or otherwise dispose of the property to the Texas Department of Mental Health and Mental Retardation no later than the 180th day before:

(A) the 60th day after the date Tarrant County Mental Health and Mental Retardation Services discontinues using the property to provide the services described by Subsection (c) of this section; or

(B) the date Tarrant County Mental Health and Mental Retardation Services enters into a binding agreement to sell or otherwise dispose of the property; and

(2) obtains approval from the Texas Board of Mental Health and Mental Retardation regarding the use and allocation of the proceeds of the sale or other disposition of the property.

(e) The Texas Department of Mental Health and Mental Retardation shall convey the property by an appropriate instrument of conveyance. The instrument of conveyance must include a provision that:

(1) indicates that the conditions precedent and possibility of reverter described by Subsection (b) of this section are binding on Tarrant County Mental Health and Mental Retardation Services;

(2) requires Tarrant County Mental Health and Mental Retardation Services to use the property only for the purpose of providing community-based mental health and mental retardation services or services for the treatment of alcohol and substance abuse; and

(3) requires Tarrant County Mental Health and Mental Retardation Services to immediately notify the Texas Department of Mental Health and Mental Retardation if Tarrant County Mental Health and Mental Retardation Services determines that the property will not be used to provide the services described by Subdivision (2) of this subsection for more than 60 continuous days.

(f) The real property referred to in Subsection (a) of this section consists of the former site of the Tarrant County Psychiatric Hospital situated at 1527 Hemphill Street in Fort Worth, Tarrant County, Texas, and further described as a +/- 3.98 acre tract in a deed to the state recorded at volume 8528, page 2057, of the Deed Records of Tarrant County.

SECTION 3. The state reserves its property interest in all oil, gas, and other minerals in and under the land conveyed as authorized by this Act and the right and power to remove any or all of the oil, gas, or other minerals, including any right and power to grant oil, gas, and mineral leases held by the state before the conveyance of the property described by this Act.

SECTION 4. Sections 31.1571 and 31.158, Natural Resources Code, and Sections 533.084 and 533.087, Health and Safety Code, do not apply to the conveyances authorized by this Act.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Moncrief moved to concur in the House amendment to **SB 396**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

SENATE BILL 104 WITH HOUSE AMENDMENT

Senator Duncan called **SB 104** 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 104** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to keeping school campuses open after school hours for recreational purposes, latchkey programs, and tutoring.

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

SECTION 1. Subchapter D, Chapter 11, Education Code, is amended by adding Section 11.165 to read as follows:

Sec. 11.165. ACCESS TO SCHOOL CAMPUSES. (a) The board of trustees of an independent school district may adopt rules to keep school campuses, including school libraries, open for recreational activities, latchkey programs, and tutoring after school hours.

(b) A professional employee or volunteer who has undergone a background screening process and is serving in a program authorized by a school district for which a school campus is kept open under this section is immune from liability to the same extent as the school district's professional employees or volunteers, as applicable.

SECTION 2. Section 101.0215(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) A municipality is liable under this chapter for damages arising from its governmental functions, which are those functions that are enjoined on a municipality by law and are given it by the state as part of the state's sovereignty, to be exercised by the municipality in the interest of the general public, including but not limited to:

(1) police and fire protection and control;
(2) health and sanitation services;
(3) street construction and design;
(4) bridge construction and maintenance and street maintenance;
(5) cemeteries and cemetery care;
(6) garbage and solid waste removal, collection, and disposal;
(7) establishment and maintenance of jails;
(8) hospitals;
(9) sanitary and storm sewers;
(10) airports;
(11) waterworks;
(12) repair garages;
(13) parks and zoos;
(14) museums;
(15) libraries and library maintenance;
(16) civic, convention centers, or coliseums;
(17) community, neighborhood, or senior citizen centers;
(18) operation of emergency ambulance service;
(19) dams and reservoirs;
(20) warning signals;
(21) regulation of traffic;
(22) transportation systems;
(23) recreational facilities, including but not limited to swimming pools, beaches, and marinas;
(24) vehicle and motor driven equipment maintenance;
(25) parking facilities;
(26) tax collection;
(27) firework displays;
(28) building codes and inspection;
(29) zoning, planning, and plat approval;
(30) engineering functions;

(31) maintenance of traffic signals, signs, and hazards;

(32) water and sewer service;

(33) animal control; [~~and~~]

(34) community development or urban renewal activities undertaken by municipalities and authorized under Chapters 373 and 374, Local Government Code; and

(35) latchkey programs conducted exclusively on a school campus under an interlocal agreement with the school district in which the school campus is located.

SECTION 3. This Act applies beginning with the 1999-2000 school year.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Duncan moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 104** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Duncan, Chair; Bivins, Bernsen, Sibley, and Cain.

SENATE BILL 1477 WITH HOUSE AMENDMENT

Senator Brown called **SB 1477** 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 1477** in SECTION 1 of the bill, in amended Section 437.0123(a), Health and Safety Code (senate engrossment page 1, lines 11 and 12), by striking "the operating hours" and substituting "each day of operation".

The amendment was read.

On motion of Senator Brown, the Senate concurred in the House amendment to **SB 1477** by a viva voce vote.

SENATE BILL 731 WITH HOUSE AMENDMENTS

Senator Harris called **SB 731** 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 731** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to structured settlements.

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

SECTION 1. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 140 to read as follows:

CHAPTER 140. STRUCTURED SETTLEMENT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 140.001. DEFINITIONS. In this chapter:

(1) "Annuity issuer" means an insurer that has issued an insurance contract used to fund periodic payments under a structured settlement.

(2) "Interested party" means, with respect to a structured settlement:

(A) the settlement recipient; and

(B) a beneficiary irrevocably designated under the annuity contract to receive payments following the settlement recipient's death.

(3) "Periodic payments" include scheduled future lump sum payments.

(4) "Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of Section 130, Internal Revenue Code of 1986 (26 U.S.C. Section 130), as amended.

(5) "Responsible administrative authority" means, with respect to a structured settlement, a government authority vested by law with exclusive jurisdiction over the settled claim resolved by the structured settlement.

(6) "Settled claim" means the original tort claim or workers' compensation claim resolved by a structured settlement.

(7) "Settlement recipient" means an individual who is receiving tax-free payments under a structured settlement agreement and proposes to transfer payment rights under the agreement.

(8) "Structured settlement" means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim.

(9) "Structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(10) "Structured settlement obligor" means, with respect to any structured settlement, the party who has the continuing obligation to make periodic payments to the settlement recipient under a structured settlement agreement or a qualified assignment agreement.

(11) "Structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer.

(12) "Transfer" means any sale, assignment, or other form of alienation or encumbrance made by a settlement recipient for consideration.

(13) "Transfer recipient" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer of the rights.

(14) "Transfer agreement" means the agreement providing for transfer of structured settlement payment rights from a settlement recipient to a transfer recipient.

SUBCHAPTER B. STRUCTURED SETTLEMENT OFFER

Sec. 140.051. DEFINITIONS. In this subchapter:

(1) "Claimant" means a person described by Section 140.052(1) or (2) who makes a claim to which this subchapter applies.

(2) "Incapacitated person" has the meaning assigned by Section 601, Texas Probate Code.

Sec. 140.052. SCOPE OF SUBCHAPTER. This subchapter applies only to a suit on a claim for damages arising from personal injury:

(1) to an incapacitated person; or

(2) in which the personal injury has resulted in the substantial disablement of the injured person.

Sec. 140.053. WRITTEN OFFER REQUIRED. An offer of structured settlement made after a suit to which this chapter applies has been filed must be:

(1) made in writing; and

(2) presented to the attorney for the claimant.

Sec. 140.054. PRESENTATION TO CLAIMANT. (a) As soon as practicable after receiving the offer under Section 140.053, but not later than any expiration date that may accompany the quotation that outlines the terms of the structured settlement offered, the attorney receiving the offer shall present the offer to the claimant or the claimant's personal representative.

(b) To the extent reasonably necessary to permit the claimant or the claimant's personal representative to make an informed decision regarding the acceptance or rejection of a proposed structured settlement, the attorney shall advise the claimant or the claimant's personal representative with respect to:

(1) the terms, conditions, and other attributes of the proposed structured settlement; and

(2) the appropriateness of the structured settlement under the circumstances.

SUBCHAPTER C. STRUCTURED SETTLEMENT TRANSFERS

Sec. 140.101. TRANSFERS OF STRUCTURED SETTLEMENTS ARISING FROM CERTAIN ACTIONS. (a) This section applies to any transfer of structured settlement payment rights established by a judgment or settled claim arising out of a civil action filed in a federal court, or a court of this state or another state, or an administrative proceeding of another state to resolve a claim for workers' compensation.

(b) Except as provided by Subsection (c), a settlement recipient may not enter into a structured settlement transfer agreement and transfer structured settlement payment rights to a transfer recipient before the later of:

(1) the fifth anniversary of the date of the original structured settlement; or

(2) the date that the settlement recipient becomes 25 years of age.

(c) A direct or indirect transfer of structured settlement payment rights made before the date specified by Subsection (b) is not effective and a structured settlement obligor or annuity issuer is not required to make a payment directly or indirectly to a transfer recipient, unless the transfer has been approved by the court of original jurisdiction, a statutory county court, or a responsible administrative authority, based on findings by the court or responsible administrative authority that:

(1) the transfer complies with the requirements of this chapter;

(2) at least 10 days before the date on which the settlement recipient first incurred any obligation with respect to the transfer, the transfer recipient provided to the settlement recipient a disclosure statement in bold type, at least 14 points in size, that states:

(A) the amounts and due dates of the structured settlement payments to be transferred;

(B) the aggregate amount of the payments;

(C) the discounted present value of the payments, with the discount rate used in determining the discounted present value;

(D) the gross amount payable to the settlement recipient in exchange for the payments;

(E) an itemized listing of all commissions, fees, costs, expenses, and charges payable by the settlement recipient or deductible from the gross amount otherwise payable to the settlement recipient;

(F) the net amount payable to the settlement recipient after deduction of all commissions, fees, costs, expenses, and charges described in Paragraph (E); and

(G) the amount of any penalty and the aggregate amount of any liquidated damages, inclusive of penalties, payable by the settlement recipient in the event of any breach of the transfer agreement by the settlement recipient;

(3) the transfer is fair and reasonable and in the best interest of the settlement recipient; and

(4) the transfer recipient has given written notice of the transfer recipient's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of the notice with the court or responsible administrative authority.

Sec. 140.102. APPROVAL OF TRANSFERS. (a) An application under Section 140.101 for authorization of a transfer of structured settlement payment rights shall be made by the transfer recipient and may be brought in the appropriate state court of original jurisdiction, a statutory county court in the county in which the settlement recipient resides, or before any responsible administrative authority that approved the structured settlement agreement.

(b) At least 20 days before the date of the scheduled hearing on an application for authorization of a transfer of structured settlement payment rights under Section 140.101, the transfer recipient shall file with the court or responsible administrative authority and serve on any other government authority that previously approved the structured settlement, and each interested party, a notice of the proposed transfer and the application for authorization, including:

(1) a copy of the transfer recipient's application;

(2) a copy of the disclosure statement required under Section 140.101(c)(2);

(3) notice that any interested party is entitled to support, oppose, or otherwise respond to the transfer recipient's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and

(4) notice of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed to be considered by the court or responsible administrative authority.

(c) The deadline provided for written responses to the application under Subsection (b)(4) may not be before the 15th day after the date the notice is served.

Sec. 140.103. DUTY TO INDEMNIFY. (a) In this section, "loss" means additional taxes owed as a result of the transfer of structured settlement payment rights and any interest or penalties that the settlement recipient may be obligated to pay or reimburse the annuity issuer or settlement obligor.

(b) A transfer recipient shall indemnify and hold harmless a settlement recipient against loss arising out of the transfer of structured settlement payment rights.

(c) The duty to indemnify under this section:

(1) applies without regard to the manner in which the action is concluded; and

(2) is in addition to any duty to indemnify established by law, contract, or otherwise.

(d) A settlement recipient eligible for indemnification under this section shall give reasonable notice to the transfer recipient of any claim that the transfer of the structured settlement payment rights has resulted in additional taxes, penalties, or interest to the settlement recipient, annuity issuer, or settlement obligor, unless the transfer recipient has been served as a party or otherwise has actual notice of the action in which the taxes, penalties, or interest are imposed.

Sec. 140.104. TRANSFERS OF STRUCTURED SETTLEMENTS NOT ARISING FROM JUDICIAL OR ADMINISTRATIVE ACTION. (a) This section applies to a transfer of structured settlement payment rights to which Section 140.101 does not apply.

(b) A direct or indirect transfer of structured settlement payment rights to which this section applies is not effective, and a structured settlement obligor or annuity issuer is not required to make a payment directly or indirectly to any transfer recipient of structured settlement payment rights, unless:

(1) the transfer complies with the requirements of this section; and

(2) at least 10 days before the date on which the settlement recipient first incurred any obligation with respect to the transfer, the transfer recipient has provided to the settlement recipient a disclosure statement described by Section 140.101(c)(2).

(c) A settlement recipient of a structured settlement to which this section applies may rescind and cancel without penalty or further obligation, an agreement to transfer structured settlement payment rights before the end of the seventh business day after the date on which the agreement is made. The settlement recipient may exercise the right to rescind and cancel the agreement by giving notice to the transfer recipient by registered mail postmarked not later than the seventh day after the date that the agreement is made.

(d) A transfer to which this section applies is void and unenforceable unless the requirements of this section are satisfied.

Sec. 140.105. WAIVER; PENALTIES. (a) The provisions of this chapter may not be waived.

(b) A settlement recipient who proposes to make a transfer of structured settlement payment rights may not incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transfer recipient based on any failure of the transfer to satisfy the conditions of Section 140.101.

Sec. 140.106. CONSTRUCTION. This chapter may not be construed to authorize a transfer of structured settlement payment rights in contravention of applicable law or to give effect to any transfer of structured settlement payment rights that is invalid under applicable law.

SECTION 2. Section 25.0003, Government Code, is amended by adding Subsection (f) to read as follows:

(f) A statutory county court has jurisdiction in cases brought under Subchapter C, Chapter 140, Civil Practice and Remedies Code.

SECTION 3. (a) This Act takes effect September 1, 1999.

(b) Subchapter B, Chapter 140, Civil Practice and Remedies Code, as added by this Act, applies only to a suit filed on or after the effective date of this Act. A suit filed 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 this purpose.

(c) Subchapter C, Chapter 140, Civil Practice and Remedies Code, as added by this Act, applies only to a transfer of structured settlement payment rights under a transfer agreement entered into on or after the effective date of this Act.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 731**, on third reading, by striking all below the enacting clause and substituting the following:

SECTION 1. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 139 to read as follows:

CHAPTER 139. PERSONAL INJURY TO CERTAIN PERSONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 139.001. DEFINITIONS. In this chapter:

(1) "Claimant" means a person described by Section 139.002(1) or (2) who makes a claim to which this chapter applies.

(2) "Incapacitated person" has the meaning assigned by Section 601, Texas Probate Code.

Sec. 139.002. SCOPE OF CHAPTER. This chapter applies only to a suit on a claim for damages arising from personal injury:

(1) to an incapacitated person; or

(2) in which the personal injury has resulted in the substantial disablement of the injured person.

[Sections 139.003-139.100 reserved for expansion]

CHAPTER B. STRUCTURED SETTLEMENT OFFER

Sec. 139.101. WRITTEN OFFER REQUIRED. An offer of structured settlement made after a suit to which this chapter applies had been filed must be:

(1) made in writing; and

(2) presented to the attorney for the claimant.

Sec. 139.102. PRESENTATION TO CLAIMANT. (a) As soon as practicable after receiving the offer under Section 139.101, but not later than any expiration date that may accompany the quotation that outlines the terms of the structured settlement offered, the attorney receiving the offer shall present the offer to the claimant or the claimant's personal representative.

(b) To the extent reasonably necessary to permit the claimant or the claimant's personal representative to make an informed decision regarding the acceptance or rejection of a proposed structured settlement, the attorney shall advise the claimant or the claimant's personal representative with respect to:

(1) the terms, conditions, and other attributes of the proposed structured settlement; and

(2) the appropriateness of the structured settlement under the circumstances.

SECTION 2. This Act takes effect September 1, 1999, and applies only to a suit filed on or after the effective date of this Act. A suit filed 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 this purpose.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendments were read.

Senator Harris moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 731** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris, Chair; Ellis, Wentworth, Lucio, and Madla.

CONFERENCE COMMITTEE ON HOUSE BILL 2947

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 2947** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2947** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris, Chair; Ellis, West, Armbrister, and Duncan.

SENATE BILL 1175 WITH HOUSE AMENDMENT

Senator Wentworth called **SB 1175** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 1175** in SECTION 1 of the bill as follows:

(1) Insert a new Section 4, Article 726a, Revised Statutes (House Committee Printing, page 2, between lines 20 and 21), to read as follows:

Sec. 4. CONFLICT WITH OTHER LAW. To the extent of any conflict between this article and Chapter 245, Local Government Code, that chapter prevails.

(2) Renumber Section 4, Article 726a, Revised Statutes (House Committee Printing, page 2, line 21), as Section 5.

The amendment was read.

On motion of Senator Wentworth, the Senate concurred in the House amendment to **SB 1175** by a viva voce vote.

SENATE BILL 1185 WITH HOUSE AMENDMENT

Senator Madla called **SB 1185** 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 1185** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the permissible number of commissioners of certain public housing authorities.

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

SECTION 1. Subsection (a), Section 392.031, Local Government Code, is amended to read as follows:

(a) Each municipal housing authority shall be governed by five, seven, nine, or 11 commissioners. The presiding officer of the governing body of a municipality shall appoint five, seven, nine, or 11 persons to serve as commissioners of the authority. An appointed commissioner of the authority may not be an officer or employee of the municipality. Appointments made under this section must comply with the requirements of Section 392.0331, if applicable.

SECTION 2. Section 392.0331(b), Local Government Code, is amended to read as follows:

(b) In appointing commissioners under Section 392.031, a municipality with a municipal housing authority composed of five commissioners shall appoint at least one commissioner to the [~~a municipal housing~~] authority who is a tenant of a public housing project over which the [~~municipal housing~~] authority has jurisdiction. In appointing commissioners under Section 392.031, a municipality with a municipal housing authority composed of seven or more commissioners shall appoint at least two commissioners to the authority who are tenants of a public housing project over which the authority has jurisdiction.

SECTION 3. Section 392.034, Local Government Code, is amended to read as follows:

Sec. 392.034. TERMS OF OFFICE OF COMMISSIONERS. (a) Two of the original commissioners of a [~~municipal or~~] county housing authority shall be

designated to serve one-year terms from the date of their appointment, and three shall be designated to serve two-year terms. Subsequent commissioners are appointed for two-year terms.

(b)(1) The original commissioners of a municipal housing authority shall serve terms as follows:

(A) for an authority with five commissioners, two shall be designated to serve one-year terms and three shall be designated to serve two-year terms;

(B) for an authority with seven commissioners, three shall be designated to serve one-year terms and four shall be designated to serve two-year terms;

(C) for an authority with nine commissioners, four shall be designated to serve one-year terms and five shall be designated to serve two-year terms; and

(D) for an authority with 11 commissioners, five shall be designated to serve one-year terms and six shall be designated to serve two-year terms.

(2) Subsequent municipal housing commissioners are appointed for two-year terms.

(c) Commissioners of a regional housing authority are appointed for two-year terms.

(d) [~~(c)~~] Vacancies shall be filled for the unexpired term.

SECTION 4. The presiding officer of the governing body of a municipality entitled to make appointments to a municipal housing authority under Section 392.031, Local Government Code, as amended by this Act, shall make the appropriate appointments as soon as practicable after the effective date of this Act.

SECTION 5. This Act takes effect September 1, 1999.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Madla, the Senate concurred in the House amendment to **SB 1185** by a viva voce vote.

SENATE BILL 964 WITH HOUSE AMENDMENT

Senator Lucio called **SB 964** 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 964** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of dentists and dental hygienists.

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

SECTION 1. Subsections (a) and (b), Section 3, Article 4543a, Revised Statutes, are amended to read as follows:

(a) An officer, employee, or paid consultant of a Texas trade association in the field of health care may not be a member or employee of the Board who is exempt from

the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for B9 [~~step 1, salary group 17,~~] of the position classification salary schedule.

(b) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a Board member and may not be a Board employee 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 B9 [~~step 1, salary group 17,~~] of the position classification salary schedule.

SECTION 2. Article 4544, Revised Statutes, is amended to read as follows:

Art. 4544. EXAMINATION FOR LICENSE TO PRACTICE DENTISTRY

Sec. 1. (a) It shall be the duty of the Board to provide for the examination of all applicants for license to practice dentistry in this State. Each person applying for a license [~~an examination~~] shall pay to said Board an application [~~a~~] fee set by the Board and shall be granted a license to practice dentistry in this State upon his satisfactorily passing an examination provided for by said Board on subjects and operations pertaining to dentistry which shall include Anatomy, Physiology, Anaesthesia, Biochemistry, Dental Materials, Diagnosis, Treatment Planning, Ethics, Jurisprudence, Hygiene, Pharmacology, Operative Dentistry, Oral Surgery, Orthodontia, Periodontia, Prosthetic Dentistry, Pathology, Microbiology, and such other subjects as are regularly taught in reputable Dental Schools as the Board may in its discretion require.

(b) The Board shall contract with an independent or regional testing service for any required clinical examination.

(c) In the event that the Board uses a regional testing service, the Board is authorized to contract for or otherwise use the services of licensed dentists in this state for the purpose of providing assistance to the regional testing service.

(d) The Board shall have the written portion of the Board's jurisprudence examination validated by an independent testing professional.

(e) [~~(b)~~] The Board by rule shall set the number of and conditions for examination retakes. The Board may require an applicant who fails the examination to meet additional education requirements set by the Board.

Sec. 2. (a) [~~The Texas State Board of Dental Examiners may provide in its rules and regulations the procedures, fees, and requirements for graduates of foreign and/or nonaccredited Dental Schools to become licensed to practice dentistry in Texas.~~

[~~Sec. 3.~~] Within 30 days after the day on which a licensing examination is administered under this article, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify examinees of the results of the examination within two weeks after the day that the Board receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the Board shall notify the examinee of the reason for the delay before the 90th day.

(b) If the Board contracts with an independent or regional testing service, this section does not apply. The contract with the independent or regional testing service shall provide for notification of results as provided by Subsection (a) of this section.

Sec. 3. (a) [~~Sec. 4.~~] If requested in writing by a person who fails the licensing examination administered under this article, the Board shall furnish the person with an analysis of the person's performance on the examination as prescribed by Board rule.

(b) If the Board contracts with an independent or regional testing service, this section does not apply. The contract with the independent or regional testing service shall provide for notification of results as provided by Subsection (a) of this section.

Sec. 4. [~~Sec. 5.~~] (a) The Board shall develop a mandatory continuing education program.

(b) The Board by rule shall:

(1) require a licensee to complete at least 12 [~~36~~] hours of continuing education for [~~in~~] each annual registration [~~three-year~~] period as a prerequisite to renewal for a subsequent annual period [~~to maintain licensure~~];

(2) identify the key factors that lead to the competent performance of professional duties under this Act;

(3) develop a process to evaluate and approve continuing education courses; and

(4) develop a process to assess a licensee's participation and performance in continuing education courses that will enable the Board to evaluate the overall effectiveness of the program.

(c) The Board is authorized to assess the continuing education needs of licensees and may require licensees to attend continuing education courses specified by the Board.

SECTION 3. Article 4545, Revised Statutes, is amended to read as follows:

Art. 4545. QUALIFICATIONS OF APPLICANTS. Each applicant for a license to practice dentistry in this state shall be not less than twenty-one (21) years of age and [~~shall present evidence~~] of good moral character and shall present:

(1) proof of graduation from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association; or

(2) proof of:

(A) graduation from a dental school that is not accredited by the Commission on Dental Accreditation of the American Dental Association; and

(B) successful completion of training in an American Dental Association approved specialty in an education program that is accredited by the Commission on Dental Accreditation and that consists of at least two years of training as specified by the Council on Dental Education.

SECTION 4. Subsection (a), Section 1, Article 4545a, Revised Statutes, is amended to read as follows:

(a) The State Board of Dental Examiners, upon payment by the applicant of a fee set by the Board, shall grant a license to practice dentistry to any reputable dentist or a license to practice dental hygiene to any reputable [~~dentist or~~] dental hygienist who:

(1) is licensed in good standing as a dentist or dental hygienist in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of this Act;

(2) has not been the subject of final or pending disciplinary action in any jurisdiction in which the dentist or dental hygienist is or has been licensed;

(3) has graduated from a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board according to rules established by the Board;

(4) has passed a national or other examination recognized by the Board relating to dentistry or dental hygiene;

(5) has successfully completed the Board's jurisprudence examination;

(6) has submitted documentation of current cardiopulmonary resuscitation certification;

(7) has practiced dentistry or dental hygiene:

(A) for a minimum of five years immediately prior to applying; or

(B) as a dental educator at a dental school or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association for the five years immediately preceding the date of applying for the license; and

(8) has met any additional criteria established by Board rule.

SECTION 5. Article 4547a, Revised Statutes, is amended to read as follows:

Art. 4547a. AID TO THE BOARD. The Texas State Board of Dental Examiners shall have power and authority to appoint such committees, clerks, advisors, consultants, dentists, hygienists, and/or examiners to aid the board to carry out its duties as it deems necessary and advisable and may reimburse said persons so appointed in such amounts as is reasonable and in conformity with the provisions of the general appropriations bill as enacted by the Texas Legislature.

SECTION 6. Article 4548d, Revised Statutes, is amended to read as follows:

Art. 4548d. SHALL EXHIBIT ANNUAL REGISTRATION CERTIFICATE [~~LICENSE~~]. Any person authorized to practice dentistry or dental hygiene [~~surgery~~] in this State either under this or any former law of Texas, shall place the person's current registration certificate [~~his license~~] on exhibition in each [~~his~~] office where said dentist or dental hygienist provides dental services. When a dentist or dental hygienist provides dental services at more than one location, the person may display a duplicate of the original registration certificate obtained from the State Board of Dental Examiners for a duplicate certificate fee set by the Board [~~license shall be in plain view of patients~~]. No such person shall do any operation in the mouth of a patient, or treat any lesions of the mouth or teeth, without having said registration certificate [~~license~~] so exhibited.

SECTION 7. Article 4548e, Revised Statutes, is amended to read as follows:

Art. 4548e. USE OF TRADE NAME. Any person, corporation, company, or association may use a corporation, company, association, or trade name, provided that each patient shall be given the name of the treating dentist in writing, either prior to or after each office visit. Any advertisement by the corporation, company, association, or trade name must include prominently the name of at least one dentist practicing under such name. The person, corporation, company, or association shall file with the State Board of Dental Examiners a list of all dentists who practice under the name and a list of each trade name used if the trade name is different from the corporation, company, or association name. A list required under this section must be updated and filed with the Board not later than the 30th day after the date of the change. Each day of violation of this Article shall constitute a separate offense.

SECTION 8. Article 4548g, Revised Statutes, is amended to read as follows:

Art. 4548g. UNPROFESSIONAL CONDUCT. It shall be unlawful for any person, firm, or corporation to engage in or be guilty of any unprofessional conduct pertaining to dentistry directly or indirectly. Any unprofessional conduct, as used herein, means and includes any one or more of the following acts:

(1) obtaining or attempting to collect any fee by fraud or misrepresentation;

(2) soliciting dental business by means of oral [~~verbal~~] communication, in person or otherwise, directed to an individual or group of less than five individuals,

which is primarily for the purpose of attracting the patronage of such individual or group to a particular practice of dentistry;

(3) employing, directly or indirectly, or permitting any unlicensed person to perform dental services upon any person, except as otherwise authorized by law or the rules and regulations of the State Board of Dental Examiners;

(4) claiming or circulating any statement of professional superiority or the performance of professional services in a superior manner;

(5) forging, altering, or changing any diploma, license, registration certificate, transcript, or any other legal document pertaining to the practice of dentistry, being a party thereto or beneficiary thereof, or making any false statement about or in securing such document, or being guilty of misusing the same;

(6) accepting employment as a dentist under any referral scheme which is false, misleading, or deceptive;

(7) advertising to perform any dental work without pain or discomfort to the patient; or

(8) advertising predictions of future satisfaction or success of any dental service.

SECTION 9. Article 4549, Revised Statutes, is amended to read as follows:

Art. 4549. REFUSAL TO [~~EXAMINE OR~~] ISSUE LICENSE; JUDICIAL SUSPENSIONS AND REVOCATIONS

Sec. 1. The State Board of Dental Examiners shall have authority to refuse to issue a license by examination to a dental or dental hygiene applicant [~~examine any person or refuse to issue a dental license or a dental hygienist license to any person~~] for any one or more of the following causes:

(a) Proof of presentation to the Board of any dishonest or fake evidence of qualification, or being guilty of any illegality, fraud, or deception in the process of examination, or for the purpose of securing a license or certificate.

(b) Proof of chronic or habitual intoxication or addiction to drugs on the part of the applicant.

(c) Proof that the applicant has been guilty of dishonest or illegal practices in or connected with the practice of dentistry or dental hygiene.

(d) Proof of conviction of the applicant of a felony under the laws of this State or any other State or of the United States.

(e) Proof that the applicant violated any of the provisions of the statutes of the State of Texas relating to the practice of dentistry or any provisions of Chapter 9, Title 71, Revised Statutes, within 12 months before the filing of an application for the license.

Sec. 2. The State Board of Dental Examiners shall have jurisdiction and authority, after notice and hearing, to suspend or revoke a dental license or a dental hygienist license, to impose a fine on a person licensed under this chapter, to place on probation with conditions a person whose license or certificate is suspended, or to reprimand a licensee or certificate holder, and in addition to or in lieu of said suspension, revocation, probation, or reprimand, to assess an administrative penalty as provided for in Article 4548j, Revised Statutes, for any one or more of the following causes:

(a) Proof of insanity of the holder of a license or certificate, as adjudged by the regularly constituted authorities.

(b) Proof of conviction of the holder of a license or certificate of a misdemeanor involving fraud or any felony [~~or a misdemeanor involving fraud~~] under the laws of this State or any other State or of the United States.

(c) That the holder [~~thereof has been or~~] is guilty of dishonorable conduct [~~, malpractice, gross incompetency,~~] or failure to treat a patient according to the standard of care in the practice of dentistry or dental hygiene.

(d) That the holder thereof has been or is guilty of any deception or misrepresentation for the purpose of soliciting or obtaining patronage.

(e) That the holder thereof procured a license or certificate through fraud or misrepresentation.

(f) That the holder thereof is addicted to or is habitually intemperate in [~~habitual intoxication or~~] the use of alcoholic beverages or drugs or has improperly obtained, possessed, used, or distributed habit-forming drugs or narcotics.

(g) That a dentist employs or permits or has employed or permitted persons to practice dentistry in the office or offices under his control or management, who were not licensed to practice dentistry.

(h) That the holder thereof has failed to use proper diligence in the conduct of his practice or to safeguard his patients against avoidable infections.

(i) That the holder thereof has failed or refused to comply with any State law relating to the regulation of dentists or dental hygienists.

(j) That the holder thereof has failed or refused to comply with the adopted and promulgated rules and regulations of the Board.

(k) That the holder thereof is physically or mentally incapable of practicing with safety to dental patients.

(l) That the holder thereof has been negligent in the performance of dental services which injured or damaged dental patients.

(m) Proof of suspension, revocation, probation, reprimand, or other restriction by another State of a license or certificate to practice dentistry or dental hygiene based upon acts by the licensee or certificate holder enumerated in this section.

(n) That the holder thereof has knowingly provided or agreed to provide dental care in a manner which violates any provision of federal or State law regulating a plan whereby any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any dental care services or regulating the business of insurance.

Sec. 3. (a) If the Board proposes to refuse to issue a license by examination to a dental or dental hygiene applicant or [~~examine a person,~~] to suspend or revoke a license, to impose a fine, to place on probation a person whose license has been suspended, or to reprimand a license holder, the person is entitled to a hearing under Chapter 2001, Government Code.

(b) The hearing under this section and an appeal from the hearing under this section are governed by Chapter 2001, Government Code (Administrative Procedure Act).

SECTION 10. Article 4549-1.1, Revised Statutes, is amended to read as follows:

Art. 4549-1.1. SUBPOENA POWER. The State Board of Dental Examiners may request and, if necessary, compel by subpoena the attendance of witnesses for examination under oath and the production for inspection and copying of books, accounts, records, papers, correspondence, documents, and other evidence relevant to the investigation of alleged violations of the provisions of the statutes of the State of

Texas relating to the practice of dentistry or any provisions of this chapter. If a person fails to comply with a subpoena issued under this article, the board, 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 board may be held~~]. The court, if it determines that good cause exists for the issuance of the subpoena, shall order compliance with the requirements of the subpoena. Failure to obey the order of the court may be punished by the court as contempt.

SECTION 11. Article 4549-2, Revised Statutes, is amended to read as follows:

Art. 4549-2. DENTAL PRIVILEGE; RECORDS OF THE DENTIST

Sec. 1. DEFINITIONS. In this article:

(1) "Board" means the State Board of Dental Examiners.

(2) "Dental record" means dental information about a patient:

(A) created or maintained by a dentist; and

(B) relating to the history or treatment of the patient.

(3) "Dentist" means a person licensed to practice dentistry.

(4) "Patient" means a person who consults with a dentist to receive dental care.

(5) "Privilege" means the confidentiality privilege created by this article.

Sec. 2. SCOPE OF PRIVILEGE. (a) The following information is privileged and may not be disclosed except as provided by this article:

(1) a communication between a dentist and a patient that relates to a professional service provided by the dentist; and

(2) a dental record.

(b) The privilege described by this section applies regardless of when the patient received the professional service from the dentist.

Sec. 3. HOLDER OF PRIVILEGE. (a) The patient is the holder of the privilege.

(b) The following persons may claim the privilege on the patient's behalf:

(1) a person authorized to act on the patient's behalf;

(2) a dentist acting on the patient's behalf; and

(3) the agent or employee of a person listed in Subdivision (1) or (2) of this subsection.

(c) A person's authority to claim the privilege is presumed in the absence of evidence to the contrary.

Sec. 4. CONSENT TO DISCLOSURE OF PRIVILEGED INFORMATION. (a) A person may disclose privileged information if the patient consents to the disclosure as provided in this section.

(b) Consent for the release of privileged information must be in writing and signed by:

(1) the patient;

(2) a parent or legal guardian of the patient if the patient is a minor;

(3) a legal guardian of the patient if the patient has been adjudicated incompetent to manage the patient's personal affairs;

(4) an attorney ad litem appointed for the patient, as authorized by:

(A) Chapter 107, Family Code;

(B) Subtitle B, Title 6, Health and Safety Code;

(C) Subtitle C, Title 7, Health and Safety Code;

(D) Subtitle D, Title 7, Health and Safety Code;

(E) Subtitle E, Title 7, Health and Safety Code;

(F) Chapter V, Texas Probate Code; or

(G) any other law; or

(5) a personal representative of the patient if the patient is deceased.

(c) The consent required under this section must specify:

(1) the information covered by the release;

(2) the person to whom the information is to be released; and

(3) the purpose for the release.

(d) A person may withdraw consent granted under this section by notifying in writing the person who maintains the information. Withdrawal of consent does not affect information disclosed before the written notice of the withdrawal was delivered.

Sec. 5. EXCEPTION TO PRIVILEGE FOR CERTAIN PROCEEDINGS. (a) The privilege does not apply in a court or administrative proceeding if the proceeding is:

(1) brought by the patient against a dentist, including a malpractice, criminal, or license revocation proceeding, if the disclosure is relevant to a claim or defense of the dentist; or

(2) to collect on a claim for dental services rendered to the patient.

(b) The privilege does not apply to the disclosure of a dental record:

(1) to the board in a disciplinary investigation or proceeding against a dentist conducted under the Dental Practice Act (Chapter 9, Title 71, Revised Statutes); or

(2) in a criminal investigation or proceeding against a dentist in which the board is participating or assisting by providing a record obtained from the dentist.

(c) The board may not reveal the identity of a patient whose dental record is disclosed under Subsection (b) of this section.

(d) Privileged information is discoverable in a criminal prosecution if:

(1) the patient is a victim, witness, or defendant; and

(2) the court in which the prosecution is pending rules, after an in camera review, that the information is relevant for discovery purposes.

(e) Privileged information is admissible in a criminal prosecution if:

(1) the patient is a victim, witness, or defendant; and

(2) the court in which the prosecution is pending rules, after an in camera review, that the information is relevant.

Sec. 6. EXCEPTION TO PRIVILEGE FOR CERTAIN DISCLOSURES BY DENTIST. (a) The privilege does not apply to the disclosure of information by a dentist to:

(1) a governmental agency, if:

(A) the disclosure is required by another law; and

(B) the agency agrees to keep confidential the identity of a patient whose dental record is disclosed;

(2) medical or law enforcement personnel, if the dentist determines that it is more likely than not that the following will occur:

(A) imminent physical injury to the patient, the dentist, or others; or

(B) immediate mental or emotional injury to the patient;

(3) a person in relation to a management or financial audit, program evaluation, or research, if the person agrees to keep confidential the identity of a patient whose dental record is disclosed;

(4) a person involved in the payment or collection of fees for services rendered by a dentist, if necessary; or

(5) another dentist, or other person under the direction of the dentist, who participates in the diagnosis, evaluation, or treatment of the patient.

(b) A person who receives information under Subsection (a)(3) of this section may not disclose a patient's identity in writing.

(c) A record reflecting a charge or specific service provided may be disclosed only when necessary in the collection of fees for a service provided by a dentist, professional association, or other entity qualified to provide or arrange for a service.

Sec. 7. EXCEPTION TO PRIVILEGE FOR CERTAIN LEGISLATIVE INQUIRIES. A state hospital or state school may disclose a dental record if:

(1) the state hospital or state school created the record;

(2) an inquiry authorized by the legislature requests the information; and

(3) the entity receiving the record agrees not to disclose a patient's identity.

Sec. 8. LIMIT ON DISCLOSURE. A person who receives privileged information may disclose the information to another person only to the extent consistent with the purpose for which the information was obtained.

Sec. 9. REQUEST FOR DENTAL RECORD: TIMING; EXCEPTION. (a) If disclosure of a dental record is authorized under this article, a dentist shall disclose the dental record within a reasonable period after it is requested but not be later than:

(1) the 30th day after the date on which it is requested from the dentist; or

(2) a date ordered by a court.

(b) A dentist may refuse to disclose the requested record if the dentist determines that providing the information would be harmful to the physical, mental, or emotional health of the patient. If the dentist determines that disclosing the record would be harmful, the dentist shall notify the person requesting the record and explain why the information would be harmful. The person requesting the record may challenge in court the dentist's refusal to disclose the record. If the court determines that the dentist made the refusal in bad faith, the court may order the disclosure of the record and award costs and attorney's fees incurred by the person to obtain the information.

(c) In disclosing a dental record under this section, a dentist shall redact privileged information about another person.

(d) A dentist may charge a reasonable fee for providing a dental record under this section. For purposes of this subsection, a fee established under Section 241.154, Health and Safety Code, is a reasonable fee.

Sec. 10. TRANSFER OF DENTAL RECORDS. Records of the diagnosis made and the treatment performed for and on a dental patient shall be the property of the dentist who performs the dental service and may not be sold, pledged as collateral, or otherwise transferred to any person other than the patient unless [~~the other person is a dentist licensed by the Board and~~] the transfer is made in compliance with this article and rules relating to the transfer of records as may be adopted by the Board. Nothing herein shall prevent the voluntary submission of records to insurance companies for the purpose of determining benefits when consent for the disclosure has been granted under Section 4 of this article.

SECTION 12. Article 4550, Revised Statutes, is amended to read as follows:

Art. 4550. RECORDS OF THE BOARD

Sec. 1. The Board shall keep records in which shall be registered the name and permanent address [~~residence~~] and place of business of all persons authorized under this law to practice dentistry, dental hygiene and such other professions or businesses under its jurisdiction as provided by law. Each dentist, dental hygienist, dental

laboratory, and dental technician registered with the Board shall timely notify the Board in writing of:

(1) any change of address of the place of business of such dentist, hygienist, laboratory, or technician; and

(2) any change of employers by such dentist, hygienist, laboratory, or technician, and any change of owners of the laboratory.

The Board is timely notified if it receives the notice within 60 days after the date the change occurs.

Sec. 2. All of the records and files of the State Board of Dental Examiners shall be public records and open to inspection at reasonable times, except the investigation files and records which shall be confidential and shall be divulged only to persons so investigated upon completion of said investigation. It is not a violation of this section for the Board to share investigation files and records with another state regulatory agency or a local, state, or federal law enforcement agency [~~during the course of a joint investigation or in determining the feasibility of conducting an investigation~~].

SECTION 13. Section 1, Article 4550a, Revised Statutes, is amended to read as follows:

Sec. 1. It shall be the duty of all persons holding a dental license or dental hygienist license issued by the State Board of Dental Examiners to annually apply and to be registered as such practitioners with the State Board of Dental Examiners on or before the expiration date of the license [~~March 1st of each calendar year~~]. Each person so registering shall pay in connection with such annual registration for the receipt hereinafter provided for, a fee as determined by said Board according to the needs of said Board, such payment to be made by each person to such Board, and every person so registering shall file with said Board a written application setting forth such facts as the Board may require. A person holding a dental or dental hygienist license must attach to the application proof that the applicant has successfully completed a current course [~~of current certification~~] in cardiopulmonary resuscitation given or approved by the American Heart Association or American Red Cross or, in the event that the applicant [~~person~~] is not physically capable of successfully completing such training, a written statement executed by either a licensed physician or an instructor in cardiopulmonary resuscitation approved by the American Heart Association or American Red Cross that describes such physical incapacity. In lieu of this requirement for completion of a current course in [~~annual~~] cardiopulmonary resuscitation [~~certification~~], a dentist or dental hygienist licensed by the State Board of Dental Examiners and residing in a country other than the United States may satisfy this requirement by submitting proof of residence upon the annual date of renewal. Upon receipt of such applications, accompanied by such fees, said Board, after ascertaining either from its records or other sources deemed by it to be reliable that the applicant holds a valid license or certificate to practice in this State, shall issue to the applicant an annual registration certificate or receipt certifying that he has filed such application and has paid the required fee; provided that the filing of such application, the payment of such fee, and the issuance of such receipt therefor shall not entitle the holder thereof to lawfully practice within the State of Texas unless he in fact holds a license or certificate as such practitioner issued by the State Board of Dental Examiners, as provided by this law, and unless said license or certificate is in full force and effect; and provided further, that in any prosecution for unlawful practice such receipt showing payment of the annual registration fee required by this chapter shall not be treated as evidence that the holder thereof is lawfully entitled to practice.

SECTION 14. Subsections (c), (d), (e), and (h), Section 2, Article 4550a, Revised Statutes, are amended to read as follows:

(c) If a person's license or certificate has been expired for not longer than ninety (90) days, the person may renew it by paying to the Board the required renewal fee and a fee that is one-half of the application [~~examination~~] fee for the license or certificate.

(d) If a person's license or certificate has been expired for longer than ninety (90) days but less than one year, the person may renew it by paying to the Board all unpaid renewal fees and a fee that is equal to the application [~~examination~~] fee for the license or certificate.

(e) If a person's license or certificate has been expired for one year or longer, the person may not renew it[~~, except as provided by Section 2A of this article~~]. The person may obtain a new license or certificate by submitting to reexamination and complying with the requirements and procedures for obtaining an original license or certificate. However, the Board may adopt rules providing for renewal without reexamination of an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application. The person must pay to the Board a fee that is equal to the examination fee for the license.

(h) The Board by rule may adopt a system under which licenses expire on various dates during the year. [~~For the year in which the license expiration date is changed, license fees payable on March 1 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.~~]

SECTION 15. Subsection (i), Section 4, Article 4550a, Revised Statutes, is amended to read as follows:

(i) The Board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the Board and to speak on any issue under the jurisdiction of the Board, except to the extent that that communication would be ex parte under any provision of law.

SECTION 16. Subsection (a), Article 4550c, Revised Statutes, is amended to read as follows:

(a) Each dental application [~~examination~~] fee and dentist annual renewal fee imposed by or under Subsection (b), Article 4551, Revised Statutes, is increased by $200.

SECTION 17. Article 4551a, Revised Statutes, is amended to read as follows:

Art. 4551a. PERSONS REGARDED AS PRACTICING DENTISTRY. Any person shall be regarded as practicing dentistry within the meaning of this Chapter:

(1) Who publicly professes to be a dentist or dental surgeon or who uses or permits to be used for himself or for any other person, the title of "Doctor," "Dr.," "Doctor of Dental Surgery," "D.D.S.," "Doctor of Dental Medicine," "D.M.D.," or any other letters, titles, terms or descriptive matter, including use of the terms "denturist" or "denturism," which directly or indirectly represents him as being able to diagnose, treat, remove stains or concretions from teeth, provide surgical and adjunctive treatment for any disease, pain, injury, deficiency, deformity or physical condition of the human teeth, oral cavity, alveolar process, gums, jaws or directly related and adjacent masticatory structures.

(2) Who shall offer or undertake by any means or methods whatsoever, to clean teeth or to remove stains, concretions or deposits from teeth in the human mouth, or who shall undertake or offer to diagnose, treat, operate, or prescribe by any means or methods for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, oral cavity, alveolar process, gums, or jaws.

(3) Any person who shall offer or undertake in any manner to prescribe or make, or cause to be made, an impression of any portion of the human mouth, teeth, gums, or jaws, for the purpose of diagnosing, prescribing, treating, or aiding in the diagnosing, prescribing or treating, any physical condition of the human mouth, teeth, gums or jaws, or for the purpose of constructing or aiding in the construction of any dental appliance, denture, dental bridge, false teeth, dental plate or plates of false teeth, or any other substitute for human teeth.

(4) Any one who owns, maintains, or operates any office or place of business where he employs or engages, under any kind of contract whatsoever, any other person or persons to practice dentistry as above defined shall be deemed to be practicing dentistry himself and shall himself be required to be duly licensed to practice dentistry as hereinabove defined, and shall be subject to all of the other provisions of this Chapter, even though the person or persons so employed or engaged by him shall be duly licensed to practice dentistry as hereinabove defined, unless otherwise provided by law.

(5) Any person, firm, group, association, or corporation who shall offer or undertake to fit, adjust, repair, or substitute in the human mouth or directly related and adjacent masticatory structures any dental appliance, structure, prosthesis, or denture, or who shall aid or cause to be fitted, adjusted, repaired, or substituted in the human mouth or directly related and adjacent masticatory structures any dental appliance, structure, prosthesis, or denture.

(6) Who makes, fabricates, processes, constructs, produces, reproduces, duplicates, repairs, relines, or fixes any full or partial denture, any fixed or removable dental bridge or appliance, any dental plate or plates of false teeth, any artificial dental restoration, or any substitute or corrective device or appliance for the human teeth, gums, jaws, mouth, alveolar process, or any part thereof for another, or who in any manner offers, undertakes, aids, abets, or causes another person so to do for another, without a written prescription or work-order therefor signed by the dentist legally engaged in the practice of dentistry in this state or in the jurisdiction where such dentist maintains his dental office and who prescribed and ordered same.

(7) Who shall offer or undertake or cause another to do, directly or indirectly, for any person any act, service, or work in the practice of dentistry or any part thereof as provided for in the laws of Texas relating to the practice of dentistry including without limitation the inducing, administering, prescribing, or dispensing any anesthesia, anesthetic drug, medicine, or agent in anywise incidental to or in connection with the practice of dentistry; or who permits or allows another to use his license or certificate to practice dentistry in this state for the purpose of performing any act described in this Article; or who shall aid or abet, directly or indirectly, the practice of dentistry by any person not duly licensed to practice dentistry by the State Board of Dental Examiners.

(8) Who shall control, attempt to control, influence, attempt to influence, or otherwise interfere with the exercise of a dentist's independent professional judgment regarding the diagnosis or treatment of any dental disease, disorder, or physical

condition. Rules adopted by the Board addressing the prohibitions in this subdivision may prohibit a dentist from engaging in contracts that allow a person who is not a dentist to influence or interfere with the exercise of a dentist's independent professional judgment. Rules adopted by the Board, pursuant to this Act, may not preclude a dentist's right to contract with a management service organization. Rules affecting contracts for provision of management services shall have the same application both to dentists contracting with management service organizations and to dentists otherwise contracting for such services. However, nothing herein shall be construed to require any entity to pay for services which are not provided for in a contract or agreement or to exempt any dentist who is a member of a hospital staff from adhering to hospital bylaws, medical staff bylaws, or established policies approved by the governing board and the medical and dental staff of the hospital.

(9) If the person holds the person out to be a denturist or uses another title that is intended to convey to the public that the services offered by the person are included within the practice of dentistry.

SECTION 18. Section 11, Chapter 244, General Laws, Acts of the 44th Legislature, Regular Session, 1935 (Article 4551b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. The definition of dentistry as contained in Chapter 9, Title 71, Revised Statutes, shall not apply to:

(1) members of the faculty of a reputable dental or dental hygiene college or school where such faculty members perform their services for the sole benefit of such school or college;

(2) students of a reputable dental college who perform their operations without pay except for actual cost of materials, in the presence of and under the direct personal supervision of a demonstrator or teacher who is a member of the faculty of a reputable dental college;

(3) persons doing laboratory work on inert matter only, and who do not solicit or obtain work, by any means, from a person or persons not a licensed dentist actually engaged in the practice of dentistry and who do not act as the agents or solicitors of, or have any interest whatsoever in, any dental office, practice or the receipts therefrom;

(4) physicians and surgeons legally authorized to practice medicine as defined by the law of this state who do not hold themselves out to the public as practicing dentistry;

(5) dental hygienists legally authorized to practice dental hygiene in this state and who practice dental hygiene in strict conformity with the laws of Texas regulating the practice of dental hygiene;

(6) those persons who as members of an established church practice healing by prayer only;

(7) employees of a dentist who make dental x-rays in the dental office and under the supervision of such dentist or dentists legally engaged in the practice of dentistry in this state;

(8) Dental Health Service Corporations legally chartered under Section A(1), Article 2.01, Texas Non-Profit Corporation Act (Article 1396-2.01, Vernon's Texas Civil Statutes);

(9) dental interns and dental residents as defined and regulated by the Texas State Board of Dental Examiners in its rules and regulations;

(10) a student [~~students~~] of a dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association and operated at an accredited institution of higher education who practices [~~practice~~] dental hygiene:

(A) without pay under the general supervision of a dentist and under the supervision of a demonstrator or teacher who is a member of the faculty of that program;

(B) in strict conformity with the laws of this state regulating the practice of dental hygiene, except that they may practice under the supervision of a demonstrator or teacher who is a dentist member of the faculty of that program; and

(C) in a clinic operated:

(i) for the sole benefit of the program's institution of higher education; or

(ii) [~~in a clinic operated~~] by a government or nonprofit organization that serves underserved populations, as determined by rule of the State Board of Dental Examiners [~~and in strict conformity with the laws of this state regulating the practice of dental hygiene~~];

(11) dental assistants who perform the duties permitted by Article 4551e-1, Revised Statutes, in strict conformity with the laws of this state; [~~or~~]

(12) dentists and dental hygienists licensed by another state or foreign country who perform clinical procedures only for professional and technical education demonstration purposes, provided that such dentists and dental hygienists must first obtain a temporary license for such purpose from the State Board of Dental Examiners;

(13) a dental hygienist who is a faculty member of a dental or dental hygiene school while practicing dental hygiene only:

(A) under the supervision of a dentist licensed in Texas or of a teacher or demonstrator who is a dentist faculty member of the school; and

(B) otherwise, in strict conformity with the laws regulating the practice of dental hygiene;

(14) a dentist enrolled in remedial training programs sponsored by the Commission on Dental Accreditation of the American Dental Association at an accredited dental or dental hygiene school while participating in such a program in this state;

(15) a dental hygienist enrolled in remedial training programs sponsored by the Commission on Dental Accreditation of the American Dental Association at an accredited dental or dental hygiene school while participating in such a program in this state in strict conformity with the laws regulating the practice of dental hygiene, except that supervision may be provided by a demonstrator or teacher who is a dentist member of the program;

(16) a dentist who is not licensed in this state and who is a candidate enrolled to take the dental clinical examination offered by the Western Regional Examining Board in this state while taking the examination;

(17) a dental hygienist who is not licensed in this state and who is a candidate enrolled to take the dental hygiene clinical examination offered by the Western Regional Examining Board in this state while taking the examination if participation is in strict conformity with the laws of this state regulating the practice of dental hygiene, except that supervision may be provided by a dentist whose services are secured by the Western Regional Examining Board;

(18) a dentist whose license is in retired status or who is licensed in another state and is attending a continuing education clinical program offered at a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association while attending the program; or

(19) a dental hygienist whose dental hygienist license is in retired status or who is licensed in another state and is attending a continuing education clinical program offered at a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association while attending the program if tasks are performed in strict conformity with the laws regulating the practice of dental hygiene, except that supervision may be provided by a dentist member of the program.

SECTION 19. Section 2, Chapter 475, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4551e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. QUALIFICATIONS. Each applicant for a license to practice [~~A~~] dental hygiene in this state [~~hygienist~~] shall be:

(1) not less than eighteen (18) years of age;

(2) of good moral character;

(3) [~~and~~] a graduate of an accredited high school or hold a certificate of high school equivalency (GED); and

(4) [~~be~~] a graduate of a recognized school or college of dentistry or dental hygiene accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the State Board of Dental Examiners that includes at least two full academic years of instruction or its equivalent at the postsecondary level.

SECTION 20. Subsection (b), Section 3, Chapter 475, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4551e, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) All work performed by a dental hygienist in the practice of dental hygiene, as defined in this Act, shall be performed in the dental office of the supervising dentist or dentists who are legally engaged in the practice of dentistry in this state[~~, by whom he or she must be employed,~~] or under the supervision of a supervising dentist in an alternate setting, including, but not limited to, a nursing home, [~~or~~] the patient's home, a school, a hospital, a state institution, a public health clinic, or another institution [~~provided that the hygienist is licensed to perform the delegated procedure and the supervising dentist examines the patient during the 12 months preceding the performance of the procedure by the dental hygienist or at the time the procedure is performed, except where employed by schools, hospitals, state institutions, public health clinics or other institutions that have applied to and been approved by the Texas State Board of Dental Examiners as a proper location for the performance of a dental procedure~~].

SECTION 21. Subsection (d), Section 4A, Chapter 475, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4551e, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) A member of the advisory committee is entitled to the compensatory per diem set by the General Appropriations Act for each day that the member engages in committee business. [~~Except for transportation expenses, a member is not entitled to reimbursement for travel expenses.~~] A member may receive [~~is entitled to~~] reimbursement for travel [~~transportation~~] expenses, including expenses for meals and lodging [~~as provided by the General Appropriations Act~~].

SECTION 22. Section 5, Chapter 475, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4551e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. EXAMINATION. (a) It shall be the duty of the Board to provide for the examination of all qualified applicants for licensure as dental hygienists in this State. All applicants for licensure [~~examination~~] shall pay an application [~~a~~] fee set by the Board to said Board as determined by said Board according to its needs and shall apply upon forms furnished by the Board and shall furnish such other information as the Board may in its discretion require to determine any applicant's qualifications. An applicant must attach to the application proof that the applicant has successfully completed a current course in cardiopulmonary resuscitation given or approved by the American Heart Association or American Red Cross before the date on which the applicant submits the application or, in the event that the applicant is not physically capable of successfully completing such training, a written statement executed by either a licensed physician or an instructor in cardiopulmonary resuscitation approved by the American Heart Association or American Red Cross that describes such physical incapacity.

(b) The examination shall be taken by all applicants on such subjects and operations pertaining to dentistry and dental hygiene which shall include Dental Anatomy, Pharmacology, X-Ray, Ethics, Jurisprudence, and Hygiene, and such other subjects as are regularly taught in reputable schools of dentistry and dental hygiene, as the Board in its discretion may require.

(c) The Board shall contract with an independent or regional testing service for any required clinical examination.

(d) In the event that the Board uses a regional testing service, the Board is authorized to contract for or otherwise use the services of licensed dental hygienists in this State for the purpose of providing assistance to the regional testing service.

(e) The Board shall have the written portion of the Board's jurisprudence examination validated by an independent testing professional.

(f) The Board shall report such grades to the applicant within a reasonable time after such examination. If the Board contracts with an independent or regional testing service, the contract with the independent or regional testing service shall provide for notification of results. Each[~~, and each~~] applicant who has satisfactorily passed all phases of the examination as determined by the Board shall be entitled to and shall be issued a license permitting such applicant to practice dental hygiene in the State of Texas as is defined and regulated by the law of this State.

(g) [~~(b)~~] The Board by rule shall set the number of and conditions for examination retakes. The Board may require an applicant who fails the examination to meet additional education requirements set by the Board.

SECTION 23. Subsection (b), Section 5A, Chapter 475, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4551e, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The State Board of Dental Examiners by rule shall:

(1) require a licensee to complete at least 12 [~~36~~] hours of continuing education for [~~in~~] each annual registration [~~three-year~~] period as a prerequisite to renewal for a subsequent annual period [~~to maintain licensure~~];

(2) identify the key factors that lead to the competent performance of professional duties under this Act;

(3) develop a process to evaluate and approve continuing education courses; and

(4) develop a process to assess a licensee's participation and performance in continuing education courses that will enable the Board to evaluate the overall effectiveness of the program.

SECTION 24. Section 4A, Chapter 475, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4551e, Vernon's Texas Civil Statutes), is amended by adding Subsection (e) to read as follows:

(e) The advisory committee is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the advisory committee is abolished September 1, 2005. An advisory committee is abolished on the date set for abolition of the agency unless the advisory committee is expressly continued by law as established by the Texas Legislature.

SECTION 25. Subsections (c) and (d), Section (6), Article 4551f, Revised Statutes, are amended to read as follows:

(c) If the owner or manager of a dental laboratory required to be registered under this section fails to renew the registration and pay the annual renewal fee before the expiration date as set by the Board, the Board shall suspend the registration certificate of that laboratory. An owner or manager may renew an unexpired certificate by paying the required renewal fee to the Board on or before the expiration date. If the certificate has been expired for not more than 90 days, the owner or manager may renew the certificate by paying to the Board the required renewal fee and a fee equal to one-half the renewal fee. If the certificate has been expired for more than 90 days but less than one year [~~two years~~], the owner or manager may renew the certificate by paying to the Board all unpaid renewal fees and a fee equal to the amount of the initial registration fee. If the certificate has been expired for one year [~~two years~~] or longer, the owner or manager may not renew the certificate. To reinstate the certificate, the owner or manager must comply with the requirements for obtaining an original certificate.

(d) The owner of a dental laboratory registered with the Board on September 1, 1987, is not required to submit proof that the laboratory has at least one certified dental technician employed by and working on the premises of the laboratory if:

(1) the registration of the laboratory has been renewed each year [~~continuous~~] since that date and all registration fees have been paid;

(2) the beneficial ownership of at least 51 percent of the laboratory has not been transferred; and

(3) the owner is employed on the premises of the laboratory not less than 30 hours each week.

SECTION 26. Article 4551j, Revised Statutes, is amended to read as follows:

Art. 4551j. CIVIL IMMUNITY, OFFICIAL ACTS. In the absence of fraud, conspiracy, or malice, no member of the Texas State Board of Dental Examiners, its employees, part-time employees, or persons who contract with the board, nor any witness called to testify by said board, nor any consultant or hearing officer appointed by said board shall be liable or subject to suit or suits for damages for alleged injury, wrong, loss, or damage allegedly caused by any of said persons for any investigation, report, recommendation, statement, evaluation, finding, order, or award made in the course of any of said persons performing assigned, designated, official, or statutory duties. This immunity is enacted to relieve and protect the persons named from being harassed and threatened with legal action while attempting to perform official duties.

SECTION 27. Section 2, Article 4544a, Revised Statutes, is repealed.

SECTION 28. Subsection (b), Section 5, Article 4544, Revised Statutes, Subsection (b), Section 5A, Chapter 475, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4551e, Vernon's Texas Civil Statutes), and Subsection (c), Section (6), Article 4551f, Revised Statutes, as amended by this Act, apply only to licenses and registrations that expire after the effective date of this Act. Licenses and registrations in effect the day before the effective date of this Act continue to be valid and expire according to their own terms.

SECTION 29. (a) This Act takes effect September 1, 1999.

(b) The changes in law made by this Act apply only to a suit or proceeding commenced on or after the effective date of this Act. A suit or proceeding that is commenced before the effective date of this Act is governed by the law applicable to the suit or proceeding immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 30. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Lucio, the Senate concurred in the House amendment to **SB 964** by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 2145

Senator Whitmire 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.

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 on the bill: Senators Whitmire, Chair; Shapiro, Jackson, Armbrister, and Shapleigh.

SENATE BILL 709 WITH HOUSE AMENDMENT

Senator Sibley called **SB 709** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 709** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to development regulations for certain unincorporated areas located in the watershed of Lake Granbury and the Brazos River; providing a penalty.

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

SECTION 1. Chapter 231, Local Government Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. DEVELOPMENT REGULATIONS IN HOOD COUNTY

Sec. 231.221. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature finds that:

(1) all of Hood County is located within the watershed that drains into Lake Granbury and the Brazos River;

(2) the area that surrounds Lake Granbury and the Brazos River in Hood County is or will be frequented for recreational purposes by residents from every part of the state;

(3) orderly development of the area and the watershed is of concern to the entire state; and

(4) without adequate development regulations, the area and the watershed will be developed in ways that endanger and interfere with the proper use of that area as a place of recreation to the detriment of the public health, safety, morals, and general welfare.

(b) The powers granted under this subchapter are for the purpose of:

(1) promoting the public health, safety, peace, morals, and general welfare;

(2) encouraging recreation; and

(3) safeguarding and preventing the pollution of the state's rivers and lakes.

Sec. 231.222. AREAS SUBJECT TO REGULATION. This subchapter applies only to the unincorporated areas of Hood County.

Sec. 231.223. DEVELOPMENT REGULATIONS GENERALLY. The Commissioners Court of Hood County may regulate:

(1) the location, design, construction, extension, and size of streets and roads;

(2) the location, design, construction, extension, size, and installation of water and wastewater facilities, including the requirements for connecting to a centralized water or wastewater system;

(3) the location, design, construction, extension, size, and installation of drainage facilities and other required public facilities;

(4) the location, design, and construction of parks, playgrounds, and recreational areas; and

(5) the abatement of harm resulting from inadequate water or wastewater facilities.

Sec. 231.224. COMPLIANCE WITH COUNTY PLAN. Development regulations must be:

(1) adopted in accordance with a county plan for growth and development of the county; and

(2) coordinated with the comprehensive plans of municipalities located in the county.

Sec. 231.225. DISTRICTS. (a) The commissioners court may divide the unincorporated area of the county into districts of a number, shape, and size the court considers best for carrying out this subchapter.

(b) Development regulations may vary from district to district.

Sec. 231.226. PROCEDURE GOVERNING ADOPTION OF REGULATIONS AND DISTRICT BOUNDARIES. (a) A development regulation adopted under this subchapter is not effective until it is adopted by the commissioners court after a public

hearing. Before the 15th day before the date of the hearing, the commissioners court must publish notice of the hearing in a newspaper of general circulation in the county.

(b) The commissioners court may establish or amend a development regulation only by an order passed by a majority vote of the full membership of the court.

Sec. 231.227. DEVELOPMENT COMMISSION. (a) The commissioners court may appoint a development commission to assist in the implementation and enforcement of development regulations adopted under this subchapter.

(b) The development commission must consist of an ex officio chairman who must be a public official in Hood County and four additional members.

(c) The development commission is advisory only and may recommend appropriate development regulations for the county.

(d) The members of the development commission are subject to the same requirements relating to conflicts of interest that are applicable to the commissioners court under Chapter 171.

Sec. 231.228. SPECIAL EXCEPTION. (a) A person aggrieved by a development regulation adopted under this subchapter may petition the commissioners court or the development commission, if the commissioners court has established a development commission, for a special exception to a development regulation adopted by the commissioners court.

(b) The commissioners court shall adopt procedures governing applications, notice, hearings, and other matters relating to the grant of a special exception.

Sec. 231.229. ENFORCEMENT; PENALTY. (a) The commissioners court may adopt orders to enforce this subchapter or an order or development regulation adopted under this subchapter.

(b) A person commits an offense if the person violates this subchapter or an order or development regulation adopted under this subchapter. An offense under this subsection is a misdemeanor punishable by a fine of not less than $500 or more than $1,000. Each day that a violation occurs constitutes a separate offense. Trial shall be in the district court.

Sec. 231.230. COOPERATION WITH MUNICIPALITIES. The commissioners court by order may enter into agreements with any municipality located in the county to assist in the implementation and enforcement of development regulations adopted under this subchapter.

Sec. 231.231. CONFLICT WITH OTHER LAWS. If a development regulation adopted under this subchapter imposes higher standards than those required under another statute or local order or regulation, the regulation adopted under this subchapter controls. If the other statute or local order or regulation imposes higher standards, that statute, order, or regulation controls.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Sibley moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 709** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sibley, Chair; Madla, Ellis, Lindsay, and Cain.

SENATE BILL 335 WITH HOUSE AMENDMENT

Senator Sibley called **SB 335** 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 335** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to a disqualification for receipt of unemployment compensation benefits for a benefit period in which the applicant for benefits works full-time.

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

SECTION 1. Section 201.091, Labor Code, is amended by adding Subsection (e) to read as follows:

(e) For purposes of this subtitle, an individual is not considered unemployed and is not eligible to receive benefits for any benefit period during which the individual works the individual's customary full-time hours, regardless of the amount of wages the individual earns during the benefit period.

SECTION 2. This Act takes effect September 1, 1999, and applies only to a claim for unemployment compensation benefits that is filed with the Texas Workforce Commission on or after that date. A claim filed before that date is governed by the law in effect on the date that the claim was filed, and the former law is continued in effect for that purpose.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Sibley, the Senate concurred in the House amendment to **SB 335** by a viva voce vote.

SENATE BILL 1354 WITH HOUSE AMENDMENT

Senator Barrientos called **SB 1354** 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 1354** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to longevity pay for certain state employees.

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

SECTION 1. Section 659.043, Government Code, is amended to read as follows:

Sec. 659.043. ENTITLEMENT. (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 five years of lifetime service credit not later than the last day of the preceding month.

(b) Notwithstanding Subsection (a)(2), an employee of the Texas School for the Blind and Visually Impaired or the Texas School for the Deaf who is otherwise eligible for longevity pay is entitled to longevity pay for each month that the employee is in a full-time paid status on the first workday for which the school has work scheduled for the employee.

SECTION 2. This Act takes effect September 1, 1999.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Barrientos, the Senate concurred in the House amendment to **SB 1354** by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 3304

Senator Sibley 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 3304** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3304** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sibley, Chair; Jackson, Armbrister, Cain, and Ellis.

CONFERENCE COMMITTEE ON HOUSE BILL 400

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 400** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 400** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ellis, Chair; Wentworth, Brown, Harris, and Zaffirini.

SENATE BILL 368 WITH HOUSE AMENDMENTS

Senator Harris called **SB 368** 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 368** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to court-ordered child support, including the child support enforcement functions of the office of the attorney general and the sunset review of those functions and the implementation of the child support enforcement provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996; providing civil and criminal penalties.

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

SECTION 1. Chapter 101, Family Code, is amended by amending Sections 101.021 and 101.024 and adding Sections 101.0021 and 101.0302 to read as follows:

Sec. 101.0021. BUREAU OF VITAL STATISTICS. "Bureau of vital statistics" means the bureau of vital statistics of the Texas Department of Health.

Sec. 101.021. OBLIGEE. "Obligee" means a person or entity entitled to receive payments [~~under an order~~] of child support, including an agency of this state or of another jurisdiction to which a person has assigned the person's right to support.

Sec. 101.024. PARENT. "Parent" means the mother, a man presumed to be the biological father, a man legally determined to be the biological father, a man [~~or~~] who has been adjudicated to be the biological father by a court of competent jurisdiction, or an adoptive mother or father. The term does not include a parent as to whom the parent-child relationship has been terminated.

Sec. 101.0302. STATE DISBURSEMENT UNIT. "State disbursement unit" means the unit established and operated by the Title IV-D agency under 42 U.S.C. Section 654b that has responsibility for receiving, distributing, maintaining, and furnishing child support payments and records on or after October 1, 1999.

SECTION 2. Section 102.009, Family Code, is amended by amending Subsection (a), as amended by Chapters 561 and 599, Acts of the 75th Legislature, Regular Session, 1997, and amending Subsection (d) to read as follows:

(a) Except as provided by Subsection (b), the following are entitled to service of citation on the filing of a petition in an original suit:

(1) a managing conservator;

(2) a possessory conservator;

(3) a person having possession of or access to the child under an order;

(4) a person required by law or by order to provide for the support of the child;

(5) a guardian of the person of the child;

(6) a guardian of the estate of the child;

(7) each parent as to whom the parent-child relationship has not been terminated or process has not been waived under Chapter 161;

(8) an alleged father, unless there is attached to the petition an affidavit of waiver of interest in a child executed by the alleged father as provided by Chapter 161 or unless the petitioner has complied with the provisions of Section 161.002(b)(2) or (b)(3);

(9) a man who has filed a notice of intent to claim paternity as provided by Subchapter D, Chapter 160; [~~and~~]

(10) the Department of Protective and Regulatory Services, if the petition requests that the department be appointed as managing conservator of the child; and[~~.~~]

(11) [~~(10)~~] the Title IV-D agency [~~attorney general~~], if the petition requests the termination of the parent-child relationship and support rights have been assigned to the Title IV-D agency [~~has filed with the court a notice of assignment~~] under Chapter 231 [~~with respect to the support rights of the child~~].

(d) If the petition requests the establishment, modification, or enforcement of a support right assigned to the Title IV-D agency under Chapter 231 or the rescission of a voluntary acknowledgment of paternity under Chapter 160, notice shall be given to the Title IV-D agency [~~attorney general~~] in a manner provided by Rule 21a, Texas Rules of Civil Procedure.

SECTION 3. Section 105.002(b), Family Code, is amended to read as follows:

(b) A party may not demand a jury trial in:

(1) a suit in which adoption is sought, including a trial on the issue of denial or revocation of consent to the adoption by the managing conservator; or

(2) a suit to determine parentage under Chapter 160.

SECTION 4. Section 108.008, Family Code, is amended to read as follows:

Sec. 108.008. FILING INFORMATION AFTER DETERMINATION OF PATERNITY. (a) On a determination of paternity, the petitioner shall provide the clerk of the court in which the order was rendered the information necessary to prepare the report of determination of paternity [~~declaration~~]. The clerk shall:

(1) prepare the report [~~declaration~~] on a form provided by the Bureau of Vital Statistics; and

(2) complete the report [~~declaration~~] immediately after the order becomes final.

(b) On completion of the report [~~Not later than the 10th day of each month~~], the clerk of the court shall forward to the state registrar a report [~~declaration~~] for each order that became final in that court [~~during the preceding month~~].

SECTION 5. Section 111.001, Family Code, is amended to read as follows:

Sec. 111.001. REVIEW OF GUIDELINES [~~APPOINTMENT OF ADVISORY COMMITTEE~~]. (a) During each regular legislative session, the standing committees of each house of the legislature having jurisdiction over family law issues shall review and revise the guidelines for possession of and access to a child under Chapter 153 and for support of a child under Chapter 154. [~~The supreme court shall appoint an advisory committee consisting of not fewer than 25 persons, composed of legislators, judges,~~

~~lawyers, and laypersons, to assist the legislature in making a periodic review of and suggested revisions, if any, to the guidelines in this title:~~

[~~(1) for the possession of a child by a parent under Chapter 153; and~~

[~~(2) for the support of a child under Chapter 154.~~]

(b) The lieutenant governor, the speaker of the house of representatives, and the attorney general may each appoint five members to a committee to review and make recommendations on the guidelines for the possession of, access to, and support of a child. The lieutenant governor and the speaker of the house of representatives shall each appoint:

(1) one member who has been appointed as a sole or joint managing conservator of a child; and

(2) one member who has been appointed as a possessory conservator of a child. [~~Not fewer than five members of this committee must be or have been:~~

[~~(1) managing conservators;~~

[~~(2) possessory conservators;~~

[~~(3) ordered to pay child support; or~~

[~~(4) entitled to receive child support.~~]

(c) The lieutenant governor shall designate from the committee members the presiding officer of the committee and the speaker of the house of representatives shall designate from the committee members the assistant presiding officer [~~guidelines shall be reviewed at least once every four years~~].

(d) Not later than December 1 of each odd-numbered year, the Title IV-D agency shall submit a report to the standing committees of each house of the legislature having jurisdiction over family law issues. The report must contain:

(1) economic data obtained from the United States Department of Agriculture on the cost of raising children;

(2) an analysis of case data on the application of and deviations from the child support guidelines; and

(3) a summary of any federal legislation enacted since the date of the last review.

SECTION 6. Section 151.002(a), Family Code, is amended to read as follows:

(a) A man is presumed to be the biological father of a child if:

(1) he and the child's biological mother are or have been married to each other and the child is born during the marriage or not more than 300 days after the date the marriage terminated by death, annulment, or divorce or by having been declared void;

(2) before the child's birth, he and the child's biological mother attempted to marry each other by a marriage in apparent compliance with law, although the attempted marriage is or could be declared void, and the child is born during the attempted marriage or not more than 300 days after the date the attempted marriage terminated by death, annulment, or divorce or by having been declared void; or

(3) after the child's birth, he and the child's biological mother have married or attempted to marry each other by a marriage in apparent compliance with law, although the attempted marriage is or could be declared void or voided by annulment, and:

(A) he has filed a written acknowledgment of his paternity of the child under Chapter 160;

(B) he consents in writing to be named and is named as the child's father on the child's birth certificate; or

(C) he is obligated to support the child under a written voluntary promise or by court order[~~;~~

[~~(4) without attempting to marry the mother, he consents in writing to be named as the child's father on the child's birth certificate; or~~

[~~(5) before the child reaches the age of majority, he receives the child into his home and openly holds out the child as his biological child~~].

SECTION 7. Section 154.001, Family Code, is amended by adding Subsection (c) to read as follows:

(c) In a Title IV-D case, if neither parent has physical possession or conservatorship of the child, the court may render an order providing that a nonparent or agency having physical possession may receive, hold, or disburse child support payments for the benefit of the child.

SECTION 8. Sections 154.004 and 154.006, Family Code, are amended to read as follows:

Sec. 154.004. PLACE OF PAYMENT. (a) The [~~Except as agreed by the parties, the~~] court shall order the payment of child support to [~~through~~] a local registry, [~~or through~~] the Title IV-D agency, or the state disbursement unit, as provided by Chapter 234, as added by Chapter 911, Acts of the 75th Legislature, Regular Session, 1997.

(b) In a Title IV-D case, the court or the Title IV-D agency shall order that income withheld for child support be paid:

(1) to the Title IV-D agency through a local registry, which shall forward the payment to the Title IV-D agency; [~~or~~]

(2) [~~directly~~] to the Title IV-D agency; or

(3) to the state disbursement unit.

Sec. 154.006. TERMINATION OF DUTY OF SUPPORT. (a) Unless otherwise agreed in writing or expressly provided in the order or as provided by Subsection (b), the child support order terminates on the marriage of the child, removal of the child's disabilities for general purposes, or death of the child or a parent ordered to pay child support.

(b) Unless a nonparent or agency has been appointed conservator of the child under Chapter 153, the order for current child support, and any provision relating to conservatorship, possession, or access terminates on the marriage or remarriage of the obligor and obligee to each other.

SECTION 9. Sections 154.242 and 154.243, Family Code, are amended to read as follows:

Sec. 154.242. PAYMENT OR TRANSFER OF CHILD SUPPORT PAYMENTS BY ELECTRONIC FUNDS TRANSFER. (a) A child support payment may be made by electronic funds transfer to:

(1) the Title IV-D agency; [~~or~~]

(2) a local registry if the registry agrees to accept electronic payment; or

(3) the state disbursement unit.

(b) A local registry may transmit child support payments to the Title IV-D agency by electronic funds transfer [~~if the Title IV-D agency agrees to accept electronic payment~~]. Unless support payments are required to be made to the state disbursement unit, an [~~An~~] obligor may make payments, with the approval of the court entering the order, directly to the bank account of the obligee by electronic transfer and provide verification of the deposit to the local registry. A local registry in a county that makes

deposits into personal bank accounts by electronic funds transfer as of April 1, 1995, may transmit a child support payment to an obligee by electronic funds transfer if the obligee maintains a bank account and provides the local registry with[~~. The obligee shall furnish to the local registry~~] the necessary bank account information to complete electronic payment [~~if the Title IV-D agency agrees to accept electronic payment~~].

Sec. 154.243. PRODUCTION OF CHILD SUPPORT PAYMENT RECORD. The Title IV-D agency, [~~or~~] a local registry, or the state disbursement unit may comply with a subpoena or other order directing the production of a child support payment record by sending a certified copy of the record or an affidavit regarding the payment record to the court that directed production of the record.

SECTION 10. Sections 155.205(a) and (b), Family Code, are amended to read as follows:

(a) On rendition of an order transferring continuing, exclusive jurisdiction to another court, the transferring court shall also order that all future payments of child support be made to the local registry of the transferee court, the Title IV-D agency, or the state disbursement unit.

(b) The transferring court's local registry, the Title IV-D agency, or the state disbursement unit shall continue to receive, record, and forward [~~disburse~~] child support payments to the payee until it receives notice that the transferred case has been docketed by the transferee court.

SECTION 11. Subchapter E, Chapter 156, Family Code, is amended by adding Section 156.409 to read as follows:

Sec. 156.409. CHANGE IN PHYSICAL POSSESSION. If the sole managing conservator of a child or the joint managing conservator who designates the child's primary residence has voluntarily relinquished the actual care, control, and possession of the child for at least six months, the court may modify an order providing for the support of the child to provide that the person having physical possession of the child shall have the right to receive and give receipt for payments of support for the child and to hold or disburse money for the benefit of the child.

SECTION 12. Section 157.005(b), Family Code, is amended to read as follows:

(b) The court retains jurisdiction to confirm the total amount of child support arrearages and render judgment for past-due child support until the date all current child support and medical support and child support arrearages, including interest and any applicable fees and costs, have been paid [~~if a motion for enforcement requesting a money judgment is filed not later than the fourth anniversary after the date:~~

[~~(1) the child becomes an adult; or~~

[~~(2) on which the child support obligation terminates under the order or by operation of law~~].

SECTION 13. Section 157.102, Family Code, is amended to read as follows:

Sec. 157.102. CAPIAS; DUTY OF LAW ENFORCEMENT OFFICIALS. Law enforcement officials shall treat the capias in the same manner as an arrest warrant for a criminal offense and shall enter the capias in the computer records for outstanding warrants maintained by the local police, sheriff, and Department of Public Safety. The capias shall [~~may~~] be forwarded to and disseminated by the Texas Crime Information Center and the National Crime Information Center.

SECTION 14. Section 157.166, Family Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) If the order imposes incarceration or a fine for criminal contempt, an enforcement order must contain findings identifying, setting out, or incorporating by

reference the provisions of the order for which enforcement was requested and the date of each occasion when the respondent's failure [~~respondent failed~~] to comply with the order was found to constitute criminal contempt.

(c) If the enforcement order imposes incarceration for civil contempt, the order must state the specific conditions on which the respondent may be released from confinement.

SECTION 15. Section 157.167, Family Code, is amended by adding Subsection (c) to read as follows:

(c) Fees and costs ordered under this section may be enforced by any means available for the enforcement of child support, including contempt.

SECTION 16. Section 157.269, Family Code, is amended to read as follows:

Sec. 157.269. RETENTION OF JURISDICTION. A court that renders an order providing for the payment of child support arrearages retains jurisdiction until all current support and medical support and child support arrearages, including interest and any applicable fees and costs, have been paid [~~the arrearages are paid in full as required by the court order~~].

SECTION 17. Section 157.317(a), Family Code, is amended to read as follows:

(a) A child support lien attaches to all real and personal property not exempt under the Texas Constitution or other law, including a depository account in a financial institution, including a mutual fund money market account, or a retirement plan, a claim for negligence, personal injury, or workers' compensation, or an insurance award for the claim, owned by the obligor on or after the date the lien notice or abstract of judgment is filed with the county clerk of the county in which the property is located, with the court clerk as to property or claims in litigation, or, as to property of the obligor in the possession or control of a third party, from the date the lien notice is filed with that party.

SECTION 18. Section 158.003(a), Family Code, is amended to read as follows:

(a) In addition to income withheld for the current support of a child, [~~the court shall order that~~] income shall be withheld from the disposable earnings of the obligor to be applied toward the liquidation of any child support arrearages, including accrued interest as provided in Chapter 157.

SECTION 19. Sections 158.004 and 158.007, Family Code, are amended to read as follows:

Sec. 158.004. WITHHOLDING FOR ARREARAGES WHEN NO CURRENT SUPPORT IS DUE. If current support is no longer owed, the court or the Title IV-D agency shall order that income be withheld for arrearages, including accrued interest as provided in Chapter 157, in an amount sufficient to discharge those arrearages in not more than two years.

Sec. 158.007. EXTENSION OF REPAYMENT SCHEDULE BY COURT OR TITLE IV-D AGENCY; UNREASONABLE HARDSHIP. If the court or the Title IV-D agency finds that the schedule for discharging arrearages would cause the obligor, the obligor's family, or children for whom support is due from the obligor to suffer unreasonable hardship, the court or agency may extend the payment period for a reasonable length of time.

SECTION 20. Sections 158.102, 158.103, and 158.104, Family Code, are amended to read as follows:

Sec. 158.102. TIME LIMITATIONS. An order or writ for income withholding under this chapter may be issued [~~The court retains jurisdiction to render an order that provides for income to be withheld from the disposable earnings of the obligor~~] until all current support and child support arrearages, [~~including~~] interest, and any

applicable fees and costs, including ordered attorney's fees and court costs, have been paid.

Sec. 158.103. CONTENTS OF ORDER OR WRIT OF WITHHOLDING. An order of withholding or writ of withholding issued under this chapter must contain the information that is necessary for an employer or other entity to comply with the existing child support order, including [~~shall state~~]:

(1) the style, cause number, and court having continuing jurisdiction of the suit;

(2) the name, address, and, if available, the social security number of the obligor;

(3) the amount and duration of the child support payments and medical support payments or other provisions for medical support, the amount of arrearages, accrued interest, and ordered fees and costs;

(4) the name, address, and, if available, the social security numbers of the child and the obligee;

(5) the name and address of the person or agency to whom the payments shall be made; and

(6) the amount of income to be withheld and remitted [~~that the obligor is required to notify the court promptly of any change affecting the order; and~~

[~~(7) that the ordered amount shall be paid to a local registry or the Title IV-D agency~~].

Sec. 158.104. REQUEST FOR ISSUANCE OF ORDER OR JUDICIAL WRIT OF WITHHOLDING. A request for issuance of an order or judicial writ of withholding may be filed with the clerk of the court by the prosecuting attorney, the Title IV-D agency, the friend of the court, a domestic relations office, the obligor, [~~or~~] the obligee, or an attorney representing the obligee or obligor.

SECTION 21. Section 158.105, Family Code, is amended by amending the heading and Subsections (a), (c), and (d) to read as follows:

Sec. 158.105. ISSUANCE AND DELIVERY OF ORDER OR JUDICIAL WRIT OF WITHHOLDING. (a) On filing a request for issuance of an order or judicial writ of withholding, the clerk of the court shall cause a certified copy of the order or writ to be delivered to the obligor's current employer or to any subsequent employer of the obligor.

(c) The clerk shall issue and mail the certified copy of the order or judicial writ not later than the fourth working day after the date the order is signed or the request is filed, whichever is later.

(d) An order or judicial writ of withholding shall be delivered to the employer by certified or registered mail, return receipt requested, electronic transmission, or by service of citation to:

(1) the person authorized to receive service of process for the employer in civil cases generally; or

(2) a person designated by the employer, by written notice to the clerk, to receive orders or writs [~~notices~~] of withholding.

SECTION 22. Section 158.106, Family Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) The Title IV-D agency shall prescribe forms as authorized by federal law in a standard format entitled order or notice to withhold income for child support [~~for:~~

[~~(1) an order of withholding that is sufficient if rendered in substantially the prescribed manner;~~

[~~(2) a notice of application for judicial writ of withholding;~~

[~~(3) a judicial writ of withholding as provided by Subchapter D; and~~

[~~(4) an administrative writ of withholding, including forms and procedures for electronic issuance of the writ, as provided by Subchapter F~~].

(d) The forms prescribed by the Title IV-D agency under this section may be used to request voluntary withholding under Section 158.011.

SECTION 23. Section 158.203, Family Code, is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

(b) For payments made by electronic funds transfer or electronic data interchange, the employer shall transmit the amount withheld not later than the second business day after the pay date.

(c) The employer shall include with each payment transmitted:

(1) the number assigned by the Title IV-D agency, if available, and the county identification number, if available;

(2) [~~, or~~] the name of the county or the county's federal information processing standard code;

(3) the cause number of the suit under which withholding is required;

(4) [~~(2)~~] the payor's name and social security number; and

(5) [~~(3)~~] the payee's name and, if available, social security number, unless the payment is transmitted by electronic funds transfer.

(d) In a case in which an obligor's income is subject to withholding, the employer shall remit the payment of child support directly to a local registry, the Title IV-D agency, or to the state disbursement unit.

SECTION 24. Section 158.210(a), Family Code, is amended to read as follows:

(a) In addition to the civil remedies provided by this subchapter or any other remedy provided by law, an employer who knowingly violates the provisions of this chapter may be subject to a fine not to exceed $200 for each occurrence in which the employer fails to:

(1) withhold income for child support as instructed in an order or writ issued under this chapter; or

(2) remit withheld income within the time required by Section 158.203 to the payee identified in the order or writ or to the state disbursement unit.

SECTION 25. Section 158.211(a), Family Code, is amended to read as follows:

(a) If an obligor terminates employment with an employer who has been withholding income, both the obligor and the employer shall notify the court or the Title IV-D agency and the obligee of that fact not later than the seventh day after the date employment terminated and shall provide the obligor's last known address and the name and address of the obligor's new employer, if known.

SECTION 26. Subchapter C, Chapter 158, Family Code, is amended by adding Section 158.212 to read as follows:

Sec. 158.212. IMPROPER PAYMENT. An employer who remits a payment to an incorrect office or person shall remit the payment to the agency or person identified in the order of withholding not later than the second business day after the date the employer receives the returned payment.

SECTION 27. Section 158.312(b), Family Code, is amended to read as follows:

(b) The request for issuance may not be filed before the 11th day after the date of receipt of the notice of application for judicial writ of withholding by the obligor.

SECTION 28. Sections 158.501 and 158.502, Family Code, are amended to read as follows:

Sec. 158.501. ISSUANCE OF ADMINISTRATIVE WRIT OF WITHHOLDING BY TITLE IV-D AGENCY. (a) The Title IV-D agency may initiate income withholding by issuing an administrative writ of withholding for the enforcement of an existing order as authorized by this subchapter.

(b) The Title IV-D agency is the only entity that may issue an administrative writ under this subchapter.

Sec. 158.502. WHEN ADMINISTRATIVE WRIT OF WITHHOLDING MAY BE ISSUED. (a) An administrative writ of withholding under this subchapter may be issued by the Title IV-D agency at any time until all current support, including medical support, and child support arrearages have been paid. The writ issued under this subsection may be based on an obligation in more than one support order.

(b) The Title IV-D agency may issue an administrative writ of withholding that directs that an amount be withheld for an arrearage or adjusts the amount to be withheld for an arrearage. An administrative writ issued under this subsection may be contested as provided by Section 158.506.

(c) The Title IV-D agency may issue an administrative writ of withholding as a reissuance of an existing withholding order on file with the court of continuing jurisdiction. The administrative writ under this subsection is not subject to the contest provisions of Sections 158.505(a)(2) and 158.506.

SECTION 29. Sections 158.503(a) and (b), Family Code, are amended to read as follows:

(a) An administrative writ of withholding issued under this subchapter may be delivered to an obligor, obligee, and employer by mail or by electronic transmission.

(b) Not later than the third business day after the date of delivery of the administrative writ of withholding to an employer, the Title IV-D agency shall file a copy of the writ, together with a signed certificate of service, in the court of continuing jurisdiction. The certificate of service may be signed electronically.

SECTION 30. Section 158.504(b), Family Code, is amended to read as follows:

(b) An administrative writ of withholding issued under this subchapter may contain only the information that is necessary for the employer to comply with the existing support [~~withholding~~] order, including the amount of current support and medical support, the amount of arrearages, accrued interest, and the amount of earnings to be withheld.

SECTION 31. Section 158.505(a), Family Code, is amended to read as follows:

(a) On issuance of an administrative writ of withholding, the Title IV-D agency shall send the obligor:

(1) notice that the withholding has commenced;

(2) except as provided by Section 158.502(c), notice of the procedures to follow if the obligor desires to contest withholding on the grounds that the identity of the obligor or the existence or amount of arrearages is incorrect; and

(3) a copy of the administrative writ, including the information concerning income withholding provided [~~in the original writ~~] to the employer.

SECTION 32. Section 158.506(a), Family Code, is amended to read as follows:

(a) Except as provided by Section 158.502(c), an [~~An~~] obligor receiving the notice under Section 158.505 [~~158.503~~] may request a review by the Title IV-D agency to resolve any issue in dispute regarding the identity of the obligor or the existence or amount of arrearages. The Title IV-D agency shall provide an opportunity for a review, by telephonic conference or in person, as may be appropriate under the circumstances.

SECTION 33. Sections 160.001 and 160.004, Family Code, are amended to read as follows:

Sec. 160.001. APPLICABILITY. This chapter governs a suit affecting the parent-child relationship in which the parentage of the biological mother or biological father is:

(1) sought to be adjudicated;

(2) voluntarily admitted by the putative father; or

(3) jointly acknowledged by the mother and putative father.

Sec. 160.004. TEMPORARY ORDERS. The court may render a temporary order authorized in a suit under this title, including an order for temporary support of a child, if the person ordered to pay support:

(1) is a presumed parent under Chapter 151;

(2) is an alleged father petitioning to have his paternity adjudicated or who admits paternity in pleadings filed with the court; [~~or~~]

(3) is found by the court at the pretrial conference authorized by this chapter not to be excluded as the biological father of the child, with the court finding that at least 99 percent of the male population is excluded from being the biological father of the child; or

(4) executed a statement or acknowledgment of paternity under Subchapter C.

SECTION 34. Subchapter C, Chapter 160, Family Code, is amended to read as follows:

SUBCHAPTER C. ACKNOWLEDGMENT OR DENIAL OF [~~VOLUNTARY~~] PATERNITY

Sec. 160.201. VOLUNTARY ACKNOWLEDGMENT OF PATERNITY. The mother of a child and a man claiming to be the father of the child may execute an acknowledgment of paternity as provided by this subchapter to establish the man's paternity. [~~(a) If a statement of paternity has been executed by a man claiming to be the biological father of a child who has no presumed father, he, the mother of the child, or the child through a representative authorized by the court or a governmental entity may file a petition for an order adjudicating him as a parent of the child. The statement of paternity must be attached to or filed with the petition.~~

[~~(b) The court shall render an order adjudicating the child to be the biological child of the child's father and the father to be a parent of the child if the court finds that the statement of paternity was executed as provided by this chapter, and the facts stated are true.~~

[~~(c) A suit for voluntary paternity may be joined with a suit for termination under Chapter 161.~~]

Sec. 160.202. EXECUTION OF ACKNOWLEDGMENT [~~STATEMENT~~] OF PATERNITY. (a) An acknowledgment of paternity must:

(1) be in writing;

(2) be signed by the mother and the putative father; and

(3) state whether the child whose paternity is being acknowledged has a presumed father under Section 151.002. [~~The statement of paternity authorized to be used by this subchapter must:~~

[~~(1) be in writing;~~

[~~(2) be signed by the man alleging himself to be the father of the child;~~

[~~(3) state whether the man alleging himself to be the father is a minor; and~~

[~~(4) clearly state that the man signing the statement acknowledges the child as his biological child.~~]

(b) If the mother declares in the acknowledgment that there is a presumed father of the child, the acknowledgment must be accompanied by a denial of paternity signed by the presumed father, unless the presumed father is the man who has signed the acknowledgment. [~~The statement may include a waiver of citation in a suit to establish the parent-child relationship and may include a waiver of the right to notice of the proceedings.~~

[~~(c) The statement must be executed before a person authorized to administer oaths under the laws of this state.~~

[~~(d) The statement may be signed before the birth of the child.~~

[~~(e) The statement must include the social security number of the father.~~]

Sec. 160.203. FILING ACKNOWLEDGMENT [~~EFFECT OF STATEMENT~~] OF PATERNITY. (a) An acknowledgment of paternity executed under this subchapter shall be filed with the bureau of vital statistics. [~~A statement of paternity executed as provided by this subchapter is prima facie evidence that the child is the child of the person executing the statement and that the person has an obligation to support the child.~~]

(b) The bureau of vital statistics may not charge a fee to file the acknowledgment. [~~If an alleged father's address is unknown or he is outside the jurisdiction of the court at the time a suit is instituted under this subchapter, his statement of paternity, in the absence of controverting evidence, is sufficient for the court to render an order establishing his paternity of the child.~~]

Sec. 160.204. SIGNING OF ACKNOWLEDGMENT OR DENIAL OF PATERNITY [~~DISPUTED PARENTAGE~~]. (a) An acknowledgment of paternity or a denial of paternity may contain the mother's signature and the putative father's signature on separate documents.

(b) An acknowledgment of paternity or a denial of paternity may be signed before the birth of the child.

(c) An adult or a minor may sign an acknowledgment of paternity or a denial of paternity. [~~If the paternity of the child is uncertain or is disputed by a party in a suit filed under this subchapter, the provisions of Subchapter B apply.~~]

Sec. 160.205. EFFECT OF ACKNOWLEDGMENT OF PATERNITY [~~VALIDATION OF PRIOR STATEMENTS~~]. (a) Subject to the right to rescind or contest an acknowledgment of paternity under this subchapter, a signed acknowledgment of paternity filed with the bureau of vital statistics is a legal finding of paternity of a child equivalent to a judicial determination.

(b) If the mother or the man claiming to be the father falsely denies the existence of a presumed father in an acknowledgment of paternity, the acknowledgment of paternity is voidable within the time to rescind under Section 160.206 [~~A statement acknowledging paternity or an obligation to support a child that was signed by the father before January 1, 1974, is valid and binding even though the statement is not executed as provided by this subchapter~~].

Sec. 160.206. SUIT TO RESCIND ACKNOWLEDGMENT OR DENIAL. (a) Subject to the requirements of Subsection (b), a person who signs an acknowledgment of paternity or a denial of paternity may file a suit affecting the parent-child relationship to rescind the acknowledgment of paternity or denial of paternity.

(b) The petition to rescind an acknowledgment of paternity or a denial of paternity must be filed not later than the earlier of:

(1) the 61st day after the date the acknowledgment of paternity or denial of paternity is filed with the bureau of vital statistics; or

(2) the date of the first hearing before a tribunal to determine an issue relating to the child in which the person is a party, including a proceeding that establishes support.

(c) If a proceeding to rescind an acknowledgment of paternity or a denial of paternity is filed jointly or agreed to by all necessary parties, the court shall order the bureau of vital statistics to amend the birth record of the child by removing the father's name.

(d) If the proceeding to rescind is not agreed to by all parties, the court shall conduct a hearing in the same manner as a proceeding to determine parentage under this chapter.

Sec. 160.207. SUIT TO CONTEST ACKNOWLEDGMENT OR DENIAL. (a) A person who may contest a presumption of paternity under Section 160.101 may contest an acknowledgment of paternity or a denial of paternity by filing a suit affecting the parent-child relationship. A suit to contest an acknowledgment of paternity or a denial of paternity that is filed after the time for a suit to rescind under Section 160.206 may be filed only on the basis of fraud, duress, or material mistake of fact. The party challenging the acknowledgment of paternity or the denial of paternity has the burden of proof.

(b) A suit to contest an acknowledgment of paternity or a denial of paternity shall be conducted in the same manner as a proceeding to determine parentage under this chapter.

(c) A person must bring suit to contest an acknowledgment of paternity or a denial of paternity not later than the fourth anniversary of the date the acknowledgment of paternity or the denial of paternity is filed with the bureau of vital statistics.

(d) A suit to contest an unrescinded acknowledgment of paternity may not be filed after the date a court has rendered an order, including a child support order, based on the acknowledgment of paternity.

(e) Notwithstanding any other provision of this chapter, a collateral attack on an acknowledgment of paternity executed under this subchapter may not be filed after the fourth anniversary of the date the acknowledgment of paternity is filed with the bureau of vital statistics.

Sec. 160.208. PROCEDURE FOR SUIT TO RESCIND OR CONTEST. (a) Each person who signs an acknowledgment of paternity or a denial of paternity must be made a party to a suit to rescind or contest the acknowledgment of paternity or denial of paternity.

(b) Except for good cause shown, the court may not suspend the legal responsibility of a person arising from the acknowledgment of paternity, including the duty to pay child support, while a suit is pending.

(c) On a determination of paternity or nonpaternity, the court shall order the bureau of vital statistics to amend the birth record of the child in accordance with the order of the court.

Sec. 160.209. COURT RATIFICATION. An unrescinded and uncontested acknowledgment of paternity is valid and effective without court ratification. In a judicial, administrative, or other proceeding, parentage of a child may be proved by evidence that an unrescinded and uncontested acknowledgment of paternity of the child has been filed with the bureau of vital statistics.

Sec. 160.210. FULL FAITH AND CREDIT. An acknowledgment of paternity signed in another state shall be accorded full faith and credit by the courts of this state if the acknowledgment is signed in apparent compliance with the other state's law.

Sec. 160.211. VALIDATION OF EARLIER STATEMENT. A statement admitting paternity or an obligation to support a child that was signed before September 1, 1999, is valid and binding even though the statement is not executed as provided by this subchapter.

Sec. 160.212. FORMS FOR ACKNOWLEDGMENT AND DENIAL OF PATERNITY. (a) The bureau of vital statistics shall prescribe forms for an acknowledgment of paternity and a denial of paternity to comply with this subchapter.

(b) The forms prescribed under this section must:

(1) contain information regarding the procedure to rescind an acknowledgment or a denial;

(2) provide that the signatures on the forms are witnessed and signed under penalty of perjury; and

(3) state whether the mother, the putative father, or the presumed father is a minor.

(c) The form for acknowledgment of paternity must inform the putative father that signing the acknowledgment of paternity with the consent of the mother:

(1) creates the parent-child relationship between him and the child;

(2) imposes upon him a legal duty to support the child; and

(3) enables a court to grant him the right of custody or visitation with the child.

(d) The form for denial of paternity must inform the man that signing the denial of paternity with the consent of the mother:

(1) legally determines his nonpaternity of the child;

(2) removes the legal duty that he support the child; and

(3) terminates his right of conservatorship or possession of or access to the child.

Sec. 160.213. VALIDITY OF FORMS. The validity of an acknowledgment of paternity or a denial of paternity is not affected by a modification of the prescribed form by the bureau of vital statistics that occurs after the acknowledgment of paternity or denial of paternity is signed if the form met the requirements of state law at the time it was signed.

Sec. 160.214. RELEASE OF INFORMATION. The bureau of vital statistics shall release information relating to the acknowledgment or denial of paternity and rescinding an acknowledgment or a denial of paternity to the Title IV-D agency and any other person authorized by law.

Sec. 160.215. ADOPTION OF RULES. The Title IV-D agency and the bureau of vital statistics may adopt rules to implement this subchapter.

Sec. 160.216. MEMORANDUM OF UNDERSTANDING. The Title IV-D agency and the bureau of vital statistics shall adopt a memorandum of understanding governing the collection and transfer of information for the voluntary acknowledgment of paternity. The Title IV-D agency and the bureau of vital statistics shall review the memorandum semiannually and renew or modify the memorandum as necessary.

SECTION 35. Section 160.251(d), Family Code, is amended to read as follows:

(d) A man is not required to register with the paternity registry if he:

(1) is presumed to be the biological father of a child under Chapter 151; [~~or~~]

(2) has been adjudicated to be the biological father of a child by a court of competent jurisdiction; or

(3) has filed an acknowledgment of paternity under Subchapter C.

SECTION 36. Subchapter D, Chapter 160, Family Code, is amended by adding Section 160.2545 to read as follows:

Sec. 160.2545. INFORMATION REGARDING REGISTRY, BIRTH RECORDS, AND ACKNOWLEDGMENTS OF PATERNITY FILED WITH BUREAU OF VITAL STATISTICS. (a) On receipt of a request for a certificate under Section 160.260 attesting to the results of a search of the paternity registry, the bureau of vital statistics shall search:

(1) notices of intent to claim paternity filed with the registry under this subchapter;

(2) birth records maintained by the bureau;

(3) acknowledgments of paternity filed with the bureau under Subchapter C; and

(4) central file records identifying a court of continuing jurisdiction and identifying the adjudicated father, if any.

(b) The bureau shall furnish information resulting from a search under Subsection (a) to the requestor.

SECTION 37. Section 161.105(b), Family Code, is amended to read as follows:

(b) The affidavit must:

(1) state that the mother is not and has not been married to the alleged father of the child;

(2) state that the mother and alleged father have not attempted to marry under the laws of this state or another state or nation;

(3) state that paternity has not been established under the laws of any state or nation; and

(4) contain one of the following, as applicable:

(A) the name and whereabouts of a man alleged to be the father;

(B) the name of an alleged father and a statement that the affiant does not know the whereabouts of the father;

(C) a statement that an alleged father has executed an acknowledgment [~~a statement~~] of paternity under Chapter 160 and an affidavit of relinquishment of parental rights under this chapter and that both affidavits have been filed with the court; or

(D) a statement that the name of an alleged father is unknown.

SECTION 38. Section 201.102(b), Family Code, is amended to read as follows:

(b) Except as provided by this subchapter, the [~~following~~] provisions of Subchapter A relating to an associate judge apply to a master appointed under this subchapter[~~:~~

[~~(1) the appearance of a party or witness before an associate judge;~~

[~~(2) the papers transmitted to the judge by the associate judge;~~

[~~(3) judicial action taken on an associate judge's report;~~

[~~(4) hearings before the judge;~~

[~~(5) an appeal;~~

[~~(6) the effect of the associate judge's report pending an appeal;~~

[~~(7) a jury trial;~~

[~~(8) the attendance of a bailiff; and~~

[~~(9) the presence of a court reporter~~].

SECTION 39. Section 201.104, Family Code, is amended by amending the heading and adding Subsections (c) and (d) to read as follows:

Sec. 201.104. [~~OTHER~~] POWERS AND DUTIES OF MASTER.

(c) A master may render and sign any order that is not a final order on the merits of the case.

(d) A master may recommend to the referring court any order after a trial on the merits.

SECTION 40. Subchapter B, Chapter 201, Family Code, is amended by adding Sections 201.1041 and 201.1042 to read as follows:

Sec. 201.1041. JUDICIAL ACTION ON MASTER'S REPORT. (a) If an appeal to the referring court is not filed or the right to appeal is waived, a recommendation of the master, other than a recommendation of enforcement by contempt or a recommendation of the immediate incarceration of a party, shall become an order of the referring court by operation of law without ratification by the referring court.

(b) A master's report that recommends enforcement by contempt or the immediate incarceration of a party becomes an order of the referring court only if the referring court signs an order adopting the master's recommendation.

(c) Except as provided by Subsection (b), the decisions and recommendations of the master have full force and effect and are enforceable as an order of the referring court during an appeal of the master's report to the referring court.

Sec. 201.1042. APPEAL TO REFERRING COURT. (a) Except as provided in this section, Section 201.015 applies to an appeal of the master's recommendations.

(b) The party appealing a master's recommendation shall file notice with the referring court and the clerk of the court.

(c) A respondent who timely files an appeal of a master's report recommending incarceration after a finding of contempt shall be brought before the referring court not later than the first working day after the date of filing the appeal. The referring court shall determine whether the respondent should be released on bond or whether the respondent's appearance in court at a designated time and place can be otherwise assured.

(d) If the respondent under Subsection (c) is released on bond or other security, the referring court shall condition the bond or other security on the respondent's promise to appear in court for a hearing on the appeal at a designated date, time, and place, and the referring court shall give the respondent notice of the hearing in open court. No other notice to the respondent is required.

(e) If the respondent under Subsection (c) is released without posting bond or security, the court shall set a hearing on the appeal at a designated date, time, and place and give the respondent notice of the hearing in open court. No other notice to the respondent is required.

(f) If the referring court is not satisfied that the respondent's appearance in court can be assured and the respondent remains incarcerated, a hearing on the appeal shall be held as soon as practicable, but not later than the fifth day after the date the respondent's notice of appeal was filed, unless the respondent and, if represented, the respondent's attorney waive the accelerated hearing.

SECTION 41. Subchapter B, Chapter 201, Family Code, is amended by adding Section 201.1065 to read as follows:

Sec. 201.1065. SUPERVISION OF MASTERS. (a) Not later than January 1, 2000, the office of court administration and the presiding judges of the administrative judicial regions shall report to the legislature a plan to improve the efficiency of the masters appointed under this subchapter and the masters' participation in the child support enforcement program in the state.

(b) The plan must:

(1) contain written personnel performance standards and require annual performance evaluations for the masters and other personnel appointed under this subchapter;

(2) require uniform practices;

(3) address training needs and resource requirements of the masters;

(4) ensure accountability of the masters for complying with applicable federal and state law, including statutes regarding a minimum 40-hour workweek and working hours under Chapter 658, Government Code; and

(5) require a uniform process for receiving, handling, and resolving complaints about individual masters or the child support masters program under this subchapter.

(c) The office of court administration shall assist the presiding judges in monitoring the masters' compliance with job performance standards and federal and state laws and policies.

SECTION 42. Section 201.107(b), Family Code, is amended to read as follows:

(b) The presiding judges of the administrative judicial regions, state agencies, and counties may contract with the Title IV-D agency for available federal funds under Title IV-D to reimburse costs and salaries associated with masters and personnel appointed under this subchapter [~~section~~] and may also use available state funds and public or private grants.

SECTION 43. Section 201.111, Family Code, is amended by amending the heading and Subsection (a) to read as follows:

Sec. 201.111. TIME TO ACT ON MASTER'S REPORT THAT INCLUDES FINDING OF CONTEMPT. (a) Not [~~Except as provided by Subsection (b), not~~] later than the 10th [~~30th~~] day after the date a master's report recommending a finding of contempt is filed, the referring court shall:

(1) adopt, approve, or reject the master's report;

(2) hear further evidence; or

(3) recommit the matter for further proceedings.

SECTION 44. Subchapter B, Chapter 201, Family Code, is amended by adding Section 201.112 to read as follows:

Sec. 201.112. LIMITATION ON LAW PRACTICE BY MASTER. A master may not engage in the private practice of law.

SECTION 45. Section 203.007(a), Family Code, is amended to read as follows:

(a) A domestic relations office may obtain the records described by Subsections (b) and (c) that relate to a person who has:

(1) been ordered to pay child support;

(2) been designated as a possessory conservator or managing conservator of a child;

(3) been designated to be the father of a child; or

(4) executed an acknowledgment [~~a statement~~] of paternity.

SECTION 46. Section 231.0011, Family Code, is amended to read as follows:

Sec. 231.0011. DEVELOPMENT OF STATEWIDE INTEGRATED SYSTEM FOR CHILD SUPPORT AND MEDICAL SUPPORT ENFORCEMENT. (a) The [~~attorney general, as the~~] Title IV-D agency [~~for the State of Texas~~] shall have final approval authority on any contract or proposal for delivery of Title IV-D services under this section and in coordination with the Texas Judicial Council, the Office of

Court Administration of the Texas Judicial System, the federal Office of Child Support Enforcement, and state, county, and local officials, shall develop and implement a statewide integrated system for child support and medical support enforcement, employing federal, state, local, and private resources to:

(1) unify child support registry functions;

(2) record and track all child support orders entered in the state;

(3) establish an automated enforcement process which will use delinquency monitoring, billing, and other enforcement techniques to ensure the payment of current support;

(4) incorporate existing enforcement resources into the system to obtain maximum benefit from state and federal funding; and

(5) ensure accountability for all participants in the process, including state, county, and local officials, private contractors, and the judiciary.

(b) [~~The attorney general shall convene a work group to determine a process and develop a timetable for implementation of a unified registry system and to identify any barriers to completion of the project. The work group shall include representatives of the judiciary, district clerks, and domestic relations offices, as well as other interested agencies, organizations, and individuals. The work group shall report the results of its deliberations to the governor, lieutenant governor, speaker of the house of representatives, and attorney general on or before January 15, 1996.~~

[~~(c) The attorney general shall, in cooperation with the work group established by this section, develop technical standards for participation in the unified child support system, including standard required data elements for effective monitoring of child support and medical support orders and for the imposition of interest on delinquent child support.~~

[~~(d)~~] Counties and other providers of child support services shall be required, as a condition of participation in the unified system, to enter into a contract with the Title IV-D agency [~~attorney general~~], to comply with all federal requirements for the Title IV-D program, and to maintain at least the current level of funding for activities which are proposed to be included in the integrated child support system.

(c) The Title IV-D agency [~~(e) The attorney general shall identify federal requirements, apply for necessary federal waivers, and provide technical system requirements and other information concerning participation in the system to counties and other providers of child support services not later than January 15, 1996. Counties shall notify the attorney general of existing resources and options for participation not later than May 1, 1996.~~

[~~(f) Not later than June 1, 1996, the attorney general shall produce a procurement and implementation plan for hardware and software necessary to implement in phases a unified statewide registry and enforcement system.~~

[~~(g) Effective January 15, 1996, the attorney general~~] may contract with any county meeting technical system requirements necessary to comply with federal law for provision of Title IV-D services in that county. All new cases in which support orders are entered in such county after the effective date of a monitoring contract shall be Title IV-D cases. Any other case in the county, subject to federal requirements and the agreement of the county and the Title IV-D agency [~~attorney general~~], may be included as a Title IV-D case. Any obligee under a support order may refuse Title IV-D enforcement services unless required to accept such services pursuant to other law.

(d) [~~(h)~~] Counties participating in the unified enforcement system shall monitor all child support registry cases and on delinquency may, subject to the approval of the Title IV-D agency, provide enforcement services through:

(1) direct provision of services by county personnel;

(2) subcontracting all or portions of the services to private entities or attorneys; or

(3) such other methods as may be approved by the Title IV-D agency.

(e) [~~(i) The attorney general shall undertake a least-cost review of its child support operations and shall use the information developed in such review to determine what, if any, contribution of program funds generated through other Title IV-D activities should be made to the participating counties. The attorney general, in cooperation with the counties and the federal Office of Child Support Enforcement shall develop a cost allocation methodology to assist the counties in identifying county contributions which may qualify for federal financial participation.~~

[~~(j)~~] The Title IV-D agency [~~attorney general~~] may phase in the integrated child support registry and enforcement system, and the requirement to implement the system shall be contingent on the receipt of locally generated funds and federal reimbursement. Locally generated funds include but are not limited to funds contributed by counties and cities.

(f) [~~(k)~~] The Title IV-D agency [~~attorney general~~] shall adopt rules to implement this section.

(g) [~~(l)~~] Participation in the statewide integrated system for child support and medical support enforcement by a county is voluntary, and nothing in this section shall be construed to mandate participation.

(h) [~~(m)~~] This section does not limit the ability of the Title IV-D agency to enter into an agreement with a county for the provision of services as authorized under Section 231.002.

SECTION 47. Subchapter A, Chapter 231, Family Code, is amended by amending Section 231.002, as amended by Chapters 874 and 911, Acts of the 75th Legislature, Regular Session, 1997, and Section 231.005 and adding Sections 231.011-231.014 to read as follows:

Sec. 231.002. POWERS AND DUTIES. (a) The Title IV-D agency may:

(1) accept, transfer, and expend funds, subject to the General Appropriations Act, made available by the federal or state government or by another public or private source for the purpose of carrying out this chapter;

(2) adopt rules for the provision of child support services;

(3) initiate legal actions needed to implement this chapter; and

(4) enter into contracts or agreements necessary to administer this chapter.

(b) The Title IV-D agency may perform the duties and functions necessary for locating children under agreements with the federal government as provided by 42 U.S.C. Section 663.

(c) The Title IV-D agency may enter into agreements or contracts with federal, state, or other public or private agencies or individuals for the purpose of carrying out this chapter. The agreements or contracts between the agency and other state agencies or political subdivisions of the state are not subject to Chapter 771 or [~~Chapter~~] 783, Government Code.

(d) Consistent with federal law and any international treaty or convention to which the United States is a party and that has been ratified by the United States Congress, the Title IV-D agency may:

(1) on approval by and in cooperation with the governor, pursue negotiations and enter into reciprocal arrangements with the federal government, another state, or a foreign country or a political subdivision of the federal government, state, or foreign country to:

(A) establish and enforce child support obligations; and

(B) establish mechanisms to enforce an order providing for possession of or access to a child rendered under Chapter 153;

(2) spend money appropriated to the agency for child support enforcement to engage in international child support enforcement; and

(3) spend other money appropriated to the agency necessary for the agency to conduct the agency's activities under Subdivision (1).

(e) The Title IV-D agency may take the following administrative actions with respect to the location of a parent, the determination of parentage, and the establishment, modification, and enforcement of child support and medical support orders required by 42 U.S.C. Section 666(c), without obtaining an order from any other judicial or administrative tribunal:

(1) issue an administrative subpoena, as provided by Section 231.303, to obtain financial or other information;

(2) order genetic testing for parentage determination, as provided by Chapter 233;

(3) order income withholding, as provided by Chapter 233, and issue an administrative writ of withholding, as provided by Chapter 158; and

(4) take any action with respect to execution, collection, and release of a judgment or lien for child support necessary to satisfy the judgment or lien, as provided by Chapter 157.

(f) [~~(e)~~] The Title IV-D agency shall recognize and enforce the authority of the Title IV-D agency of another state to take actions similar to the actions listed in this section [~~Subsection (d)~~].

(g) [~~(f)~~] The Title IV-D agency shall develop and use procedures for the administrative enforcement of interstate cases meeting the requirements of 42 U.S.C. Section 666(a)(14) under which the agency:

(1) shall promptly respond [~~within five business days~~] to a request made by another state for assistance in a Title IV-D case; and

(2) may, by electronic or other means, transmit to another state a request for assistance in a Title IV-D case.

(h) In each Title IV-D case in which the total amount of a child support obligor's child support delinquency is at least $5,000 and the obligor owns property in the state or resides in the state, the Title IV-D agency shall enforce the child support obligation by filing a child support lien under Subchapter G, Chapter 157. This subsection does not prohibit the Title IV-D agency from filing a child support lien in any other case in which a lien may be filed under Subchapter G, Chapter 157.

Sec. 231.005. BIENNIAL REPORT REQUIRED. (a) The Title IV-D agency shall report to the legislature each biennium on:

(1) the effectiveness of the agency's child support enforcement activity in reducing the state's public assistance obligations;

(2) the use and effectiveness of all enforcement tools authorized by state or federal law or otherwise available to the agency; and

(3) the progress and impact of the Title IV-D agency's efforts to use private contractors to perform Title IV-D program functions.

(b) The agency shall develop a method for estimating the costs and benefits of the child support enforcement program and the effect of the program on appropriations for public assistance.

Sec. 231.011. INTERAGENCY WORK GROUP. (a) The Title IV-D agency shall convene a standing work group to develop and maintain an interagency partnership strategy. The director of the Title IV-D agency shall lead the work group.

(b) The work group shall consist of representatives from the Department of Protective and Regulatory Services, the Texas Department of Human Services, the Texas Department of Health, the Texas Workforce Commission, and the office of the comptroller. The executive head of each agency shall appoint the agency's representative. If the work group addresses an issue that is under the authority of the Health and Human Services Commission, the work group shall include a representative from that commission when addressing that issue.

(c) The interagency partnership strategy shall:

(1) identify methods to improve the exchange of data between the agencies represented in the work group;

(2) develop procedures to coordinate the child support efforts of each agency in the work group;

(3) identify the benefits of contracts under which a state agency provides child support services related to the agency's core competency to the Title IV-D agency;

(4) identify ways to improve client intake and client referral;

(5) develop methods to enhance foster care child support collections;

(6) increase the recovery of Medicaid for the Title IV-D agency and the Texas Department of Health; and

(7) examine the benefits of contracts under which the comptroller or a private entity provides services regarding the receipt and payment of child support.

(d) Each agency represented on the work group shall identify specific child support services that are related to the agency's areas of core competence and may be provided by the agency under a contract. The state auditor and the State Council on Competitive Government shall assist:

(1) the agencies in identifying the child support services that are within the agency's core competency; and

(2) the work group in developing strategies to obtain child support services from the agencies.

Sec. 231.012. COUNTY ADVISORY WORK GROUP. (a) The director of the Title IV-D agency shall establish a county advisory work group to assist the Title IV-D agency in developing and changing child support programs that affect counties. The work group shall consist of at least one of each of the following:

(1) county judge;

(2) county commissioner;

(3) district clerk;

(4) domestic relations officer;

(5) Title IV-D master; and

(6) district court judge.

(b) The director of the Title IV-D agency shall appoint the members of the work group after consulting with the relevant professional or trade associations of the professions that are represented on the work group. The director of the Title IV-D

agency shall determine the number of members of the work group and shall designate the presiding officer of the group.

(c) The work group shall:

(1) advise the director of the Title IV-D agency of the impact on counties that a proposed child support program or a change in a program may have;

(2) establish a state-county child support improvement plan;

(3) advise the Title IV-D agency on the operation of the state disbursement unit;

(4) plan for monetary incentives for county partnership programs;

(5) expand the number of agreements with counties for enforcement services; and

(6) work with relevant statewide associations on a model partnership agreement.

(d) A work group member or the member's designee may not receive compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing the member's duties under this section.

(e) The work group is not an advisory committee as defined by Section 2110.001, Government Code. Chapter 2110, Government Code, does not apply to the work group.

Sec. 231.013. INFORMATION RESOURCES STEERING COMMITTEE. (a) The Title IV-D agency shall create an information resources steering committee to:

(1) oversee information resource project development for the Title IV-D agency;

(2) make strategic prioritization recommendations;

(3) facilitate development of accurate information for the director of the Title IV-D agency; and

(4) perform other functions as determined by the director of the Title IV-D agency.

(b) The steering committee must include a senior management executive representing each significant function of the Title IV-D agency. The steering committee may include a person representing:

(1) counties; or

(2) a vendor contracting with the Title IV-D agency.

(c) The director of the Title IV-D agency shall appoint the members of the steering committee after consulting with the Department of Information Resources.

Sec. 231.014. PERSONNEL. The director of the Title IV-D agency shall provide to the employees of the Title IV-D agency, as often as necessary, information regarding the requirements for employment under this title, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state employees.

SECTION 48. Section 231.106(b), Family Code, is amended to read as follows:

(b) The Title IV-D agency shall send a copy of the notice of termination of assignment to the court ordering the support and to the child support registry, and on receipt of the notice the clerk of the court shall file the notice in the appropriate case file. The clerk may not require an order of the court to terminate the assignment and direct support payments to the person entitled to receive the payment.

SECTION 49. Section 231.108, Family Code, is amended by adding Subsection (f) to read as follows:

(f) The Title IV-D agency, by rule, may provide for the release of information to persons for purposes not prohibited by federal law.

SECTION 50. Subchapter B, Chapter 231, Family Code, is amended by amending Section 231.112 and Section 231.115, as added by Chapter 911, Acts of the 75th Legislature, Regular Session, 1997, renumbering and amending Section 231.115, as added by Chapter 165, Acts of the 75th Legislature, Regular Session, 1997, and adding Sections 231.118, 231.119, and 231.120 to read as follows:

Sec. 231.112. INFORMATION ON PATERNITY ESTABLISHMENT. On notification by the state registrar under Section 192.005(d), Health and Safety Code, that the items relating to the child's father are not completed on a birth certificate filed with the state registrar, the Title IV-D agency may provide to:

(1) the child's mother and, if possible, the man claiming to be the child's biological father written information necessary for the man to complete an acknowledgment [~~a statement~~] of paternity as provided by Chapter 160; and

(2) the child's mother written information:

(A) explaining the benefits of having the child's paternity established; and

(B) regarding the availability of paternity establishment and child support enforcement services.

Sec. 231.115. NONCOOPERATION BY RECIPIENT OF PUBLIC ASSISTANCE. (a) The failure by a person who is a recipient of public assistance under Chapter 31, Human Resources Code, to provide accurate information as required by Section 31.0315, Human Resources Code, shall serve as the basis for a determination by the Title IV-D agency that the person did not cooperate with the Title IV-D agency.

(b) The Title IV-D agency shall:

(1) identify [~~adopt rules establishing~~] the actions or failures to act by a recipient of public assistance that constitute noncooperation with the Title IV-D agency;

(2) adopt rules governing noncompliance; and

(3) send noncompliance determinations to the Texas Department of Human Services for immediate imposition of sanctions.

(c) In adopting rules under this section that establish the basis for determining that a person has failed to cooperate with the Title IV-D agency, the Title IV-D agency shall consider whether:

(1) good cause exists for the failure to cooperate;

(2) the person has failed to disclose the name and location of an alleged or probable parent of the child, if known by the person, at the time of applying for public assistance or at a subsequent time; and

(3) the person named a man as the alleged father and the man was subsequently excluded by parentage testing as being the father if the person has previously named another man as the child's father.

Sec. 231.117 [~~231.115~~]. UNEMPLOYED NONCUSTODIAL PARENTS. (a) The Title IV-D agency shall refer to appropriate state and local entities that assist unemployed noncustodial parents in gaining employment any unemployed noncustodial parent who is in arrears in court-ordered child support payments to a child who:

(1) receives financial assistance under Chapter 31, Human Resources Code; or

(2) is otherwise eligible to receive financial assistance under Chapter 31, Human Resources Code, and for whom the Department of Protective and Regulatory Services is providing substitute care.

(b) A referral under Subsection (a) may include:

(1) skills training and job placement through:

(A) the Texas Workforce Commission; or

(B) the agency responsible for the food stamp employment and training program (7 U.S.C. Section 2015(d));

(2) referrals to education and literacy classes; and

(3) counseling regarding:

(A) substance abuse;

(B) parenting skills;

(C) life skills; and

(D) mediation techniques.

(c) The Title IV-D agency may require an unemployed noncustodial parent to complete the training, classes, or counseling the parent is referred to under this section. The agency shall suspend under Chapter 232 the license of a parent who fails to comply with the requirements of this subsection.

(d) A court or the Title IV-D agency may issue an order that requires the parent to either work, have a plan to pay overdue child support, or participate in work activities appropriate to pay the overdue support.

Sec. 231.118. SERVICE OF CITATION. (a) The Title IV-D agency may contract with private process servers to serve a citation, a subpoena, an order, or any other document required or appropriate under law to be served a party.

(b) For the purposes of Rule 103 of the Texas Rules of Civil Procedure, a person who serves a citation or any other document under this section is authorized to serve the document without a written court order authorizing the service.

(c) Issuance and return of the process shall be made in accordance with law and shall be verified by the person serving the document.

Sec. 231.119. OMBUDSMAN PROGRAM. (a) The Title IV-D agency shall establish an ombudsman program to process and track complaints against the Title IV-D agency. The director of the Title IV-D agency shall:

(1) designate an employee to serve as chief ombudsman to manage the ombudsman program; and

(2) designate an employee in each field office to act as the ombudsman for the office.

(b) The Title IV-D agency shall develop and implement a uniform process for receiving and resolving complaints against the Title IV-D agency throughout the state. The process shall include statewide procedures to inform the public and recipients of Title IV-D services of the right to file a complaint against the Title IV-D agency, including the mailing addresses and telephone numbers of appropriate Title IV-D agency personnel responsible for receiving complaints and providing related assistance.

(c) The ombudsman in each field office shall ensure that an employee in the field office responds to and attempts to resolve each complaint that is filed with the field office. If a complaint cannot be resolved at the field office level, the ombudsman in the field office shall refer the complaint to the chief ombudsman.

(d) The Title IV-D agency shall maintain a file on each written complaint filed with the Title IV-D agency. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the Title IV-D agency;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the agency closed the file without taking action other than to investigate the complaint.

(e) The Title IV-D agency, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation of the complaint unless the notice would jeopardize an undercover investigation.

(f) The Title IV-D agency shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the Title IV-D agency's policies and procedures relating to complaint investigation and resolution.

Sec. 231.120. TOLL-FREE TELEPHONE NUMBER FOR EMPLOYERS. The Title IV-D agency shall maintain a toll-free telephone number at which personnel are available during normal business hours to answer questions from employers responsible for withholding child support. The Title IV-D agency shall inform employers about the toll-free telephone number.

SECTION 51. Section 231.204, Family Code, is amended to read as follows:

Sec. 231.204. PROHIBITED FEES IN TITLE IV-D CASES. Except as provided by this subchapter, an appellate court, a clerk of an appellate court, a district or county clerk, sheriff, constable, or other government officer or employee may not charge the Title IV-D agency or a private attorney or political subdivision that has entered into a contract to provide Title IV-D services any fees or other amounts otherwise imposed by law for services rendered in, or in connection with, a Title IV-D case, including:

(1) a fee payable to a district clerk for:

(A) performing services related to the estates of deceased persons or minors;

(B) certifying copies; or

(C) comparing copies to originals;

(2) a court reporter fee, except as provided by Section 231.209;

(3) a judicial fund fee;

(4) a fee for a child support registry, enforcement office, or domestic relations office; and

(5) a fee for alternative dispute resolution services.

SECTION 52. Section 231.301, Family Code, is amended to read as follows:

Sec. 231.301. TITLE IV-D PARENT LOCATOR SERVICES. (a) The parent locator service conducted by the Title IV-D agency shall be used to obtain information for:

(1) child support establishment and enforcement purposes regarding the identity, social security number, location, employer and employment benefits, income, and assets or debts of any individual under an obligation to pay child or medical support or to whom a support obligation is owed; or

(2) the establishment of paternity.

(b) As authorized by federal law, the following persons may receive information under this section:

(1) a person or entity that contracts with the Title IV-D agency to provide services authorized under Title IV-D or an employee of the Title IV-D agency;

(2) an attorney who has the duty or authority, by law, to enforce an order for possession of or access to a child;

(3) a court, or an agent of the court, having jurisdiction to render or enforce an order for possession of or access to a child;

(4) the resident parent, legal guardian, attorney, or agent of a child who is not receiving public assistance; and

(5) a state agency that administers a program operated under a state plan as provided by 42 U.S.C. Section 653(c).

SECTION 53. Section 231.305, Family Code, is amended to read as follows:

Sec. 231.305. MEMORANDUM OF UNDERSTANDING ON CHILD SUPPORT FOR CHILDREN RECEIVING PUBLIC ASSISTANCE. (a) The Title IV-D agency and the Texas Department of Human Services by rule shall adopt a memorandum of understanding governing the establishment and enforcement of court-ordered child support in cases involving children who receive financial assistance under Chapter 31, Human Resources Code. The memorandum shall require the agency and the department to:

(1) develop procedures to ensure that the information the department is required to collect to establish and enforce child support:

(A) is collected from the person applying to receive the financial assistance at the time the application is filed;

(B) is accurate and complete when the department forwards the information to the agency; [~~and~~]

(C) is not information previously reported to the agency; and

(D) is forwarded to the agency in an expeditious manner;

(2) develop procedures to ensure that the agency does not duplicate the efforts of the department in gathering necessary information;

(3) clarify each agency's responsibilities in the establishment and enforcement of child support; [~~and~~]

(4) develop guidelines for use by eligibility workers and child support enforcement officers in obtaining from an applicant the information required to establish and enforce child support for that child;

(5) develop training programs for appropriate department personnel to enhance the collection of information for child support enforcement;

(6) develop a standard time, not to exceed 30 days, for the department to initiate a sanction on request from the agency;

(7) develop procedures for agency participation in department appeal hearings relating to noncompliance sanctions;

(8) develop performance measures regarding the timeliness and the number of sanctions resulting from agency requests for noncompliance sanctions; and

(9) prescribe:

(A) the time in which the department is required to forward information under Subdivision (1)(D); and

(B) what constitutes complete information under Subdivision (1)(B).

(b) The Title IV-D agency and the Texas Department of Human Services [~~semiannually~~] shall review and renew or modify the memorandum not later than January 1 of each even-numbered year [~~as necessary~~].

SECTION 54. Section 231.307, Family Code, is amended by amending Subsections (c) and (d) and adding Subsection (e) to read as follows:

(c) The Title IV-D agency may enter into an agreement with one or more states to create a consortium for data matches authorized under this section. The Title IV-D agency may contract with a vendor selected by the consortium to perform data matches with financial institutions.

(d) A financial institution providing information or responding to a notice of child support lien provided under Subchapter G, Chapter 157, or otherwise acting in good faith to comply with the Title IV-D agency's procedures under this section may not be liable under any federal or state law for any damages that arise from those acts.

(e) [~~(d)~~] In this section:

(1) "Financial institution" has the meaning assigned by 42 U.S.C. Section 669a(d)(1); and

(2) "Account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money market mutual fund account.

SECTION 55. Section 232.003(a), Family Code, is amended to read as follows:

(a) A court or the Title IV-D agency may issue an order suspending a license as provided by this chapter if an individual who is an obligor:

(1) has a child support arrearage equal to or greater than the total support due for 90 days under a support order;

(2) has been provided an opportunity to make payments toward the child support arrearage under a court order or an agreed [~~or court-ordered~~] repayment schedule[~~, without regard to whether the repayment schedule was agreed to or ordered before or after the date the petition for suspension of a license was filed~~]; and

(3) has failed to comply with the repayment schedule.

SECTION 56. Section 232.004(b), Family Code, is amended to read as follows:

(b) In a Title IV-D case, the petition shall be filed with the Title IV-D agency, the court of continuing jurisdiction, or the tribunal in which a child support order has been registered under Chapter 159. The tribunal in which the petition is filed obtains jurisdiction over the matter.

SECTION 57. Section 232.008(a), Family Code, is amended to read as follows:

(a) On making the findings required by Section 232.003, the court or Title IV-D agency shall render an order suspending the license unless the individual:

(1) proves that all arrearages and the current month's support have been paid; [~~or~~]

(2) shows good cause for failure to comply with the subpoena; or

(3) establishes an affirmative defense as provided by Section 157.008(c).

SECTION 58. Section 233.001, Family Code, as added by Chapter 420, Acts of the 75th Legislature, Regular Session, 1997, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The state case registry shall provide to a custodial parent under Subsection (a) who makes a request for information or, to the extent provided by federal law, to an attorney, friend of the court, guardian ad litem, or domestic relations office designated by the parent any information in the registry required by 42 U.S.C. Section 654a(e) concerning the parent's case[~~, including:~~

[~~(1) the noncustodial parent's address, social security number, and employer's name and address;~~

[~~(2) the amount and location of real and personal property owned by the noncustodial parent;~~

[~~(3) the name and address of financial institutions in which the noncustodial parent has an account and each account number; and~~

[~~(4) any other information the disclosure of which is not specifically prohibited by federal law~~].

(c) To the extent permitted by federal law, the state case registry shall provide the information described by Subsection (b) to a domestic relations office or friend of the court that requests information regarding a case described by Subsection (a).

SECTION 59. Section 233.005, Family Code, as redesignated by Chapter 911, Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

Sec. 233.005. INITIATING ADMINISTRATIVE ACTIONS. An administrative action under this chapter may be initiated by issuing a notice of child support review under Section 233.006 or a notice of proposed child support review order under Section 233.009 or 233.0095 to each party entitled to notice.

SECTION 60. Chapter 233, Family Code, as redesignated by Chapter 911, Acts of the 75th Legislature, Regular Session, 1997, is amended by adding Section 233.0095 to read as follows:

Sec. 233.0095. NOTICE OF PROPOSED CHILD SUPPORT REVIEW ORDER IN CASES OF ACKNOWLEDGED PATERNITY. (a) If an individual has signed the acknowledgment of paternity as the father of the child or executed a statement of paternity, the Title IV-D agency may serve on the parties a notice of proposed child support review order.

(b) The notice of proposed child support review order shall state:

(1) the amount of periodic payment of child support due;

(2) that the person identified in the notice as the party responsible for payment of the support amounts may only contest the amount of monthly support; and

(3) that, if the person identified in the notice as the party responsible for payment of the support amounts does not contest the notice in writing or request a negotiation conference to discuss the notice not later than the 15th day after the date the notice was delivered, the Title IV-D agency may file the child support order for child support and for medical support for the child as provided by Chapter 154 according to the information available to the agency.

(c) The Title IV-D agency may schedule a negotiation conference without a request from a party.

(d) The Title IV-D agency shall schedule a negotiation conference on the timely request of a party.

(e) The Title IV-D agency may conduct a negotiation conference, or any part of a negotiation conference, by telephone conference call, by video conference, or in person and may adjourn the conference for a reasonable time to permit mediation of issues that cannot be resolved by the parties and the agency.

SECTION 61. Section 233.018, Family Code, as redesignated by Chapter 911, Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

Sec. 233.018. ADDITIONAL CONTENTS OF AGREED CHILD SUPPORT REVIEW ORDER. (a) If a negotiation conference results in an agreement of the parties, each party must sign the child support review order and the order must contain as to each party:

(1) a waiver by the party of the right to service of process and a court hearing and the making of a record on the petition for confirmation;

(2) the mailing address of the party; and

(3) the following statement printed on the order in boldfaced type, [~~boldface or~~] in [~~all~~] capital letters, or underlined:

"I KNOW THAT I DO NOT HAVE TO SIGN THIS CHILD SUPPORT REVIEW ORDER. I UNDERSTAND THAT IF I SIGN THIS ORDER, IT WILL BE CONFIRMED BY THE COURT WITHOUT FURTHER NOTICE TO ME. I KNOW THAT I HAVE A RIGHT TO REQUEST THAT A COURT RECONSIDER THE ORDER BY FILING A MOTION FOR A NEW TRIAL AT ANY TIME BEFORE THE 30TH DAY AFTER THE DATE OF THE CONFIRMATION OF THE ORDER BY THE COURT. I KNOW THAT IF I DO NOT OBEY THE TERMS OF THIS ORDER I MAY BE HELD IN CONTEMPT OF COURT."

(b) If a negotiation conference results in an agreement on some but not all issues in the case, the parties may sign a waiver of service along with an agreement to appear in court at a specified date and time for a determination by the court of all unresolved issues. Notice of the hearing is not required.

SECTION 62. Section 233.019(c), Family Code, as redesignated and amended by Chapter 911, Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

(c) If applicable, an acknowledgment [~~a statement~~] of paternity or a written report of a parentage testing expert and any documentary evidence relied upon by the agency shall be filed with the agreed review order as an exhibit to the order.

SECTION 63. Section 233.020, Family Code, as redesignated by Chapter 911, Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

Sec. 233.020. CONTENTS OF PETITION FOR CONFIRMATION OF NONAGREED ORDER. (a) A petition for confirmation of a child support review order not agreed to by the parties:

(1) must include the final review order as an attachment to the petition; and

(2) may include a waiver of service executed under Section 233.018(b) and an agreement to appear in court for a hearing.

(b) Documentary evidence relied on by the Title IV-D agency, including, if applicable, an acknowledgment [~~a statement~~] of paternity or a written report of a parentage testing expert, shall be filed with the clerk as exhibits to the petition, but are not required to be served on the parties. The petition must identify the exhibits that are filed with the clerk.

SECTION 64. Subchapter A, Chapter 234, Family Code, as added by Chapter 911, Acts of the 75th Legislature, Regular Session, 1997, is amended by amending Sections 234.001, 234.002, and 234.003 and adding Sections 234.006, 234.007, and 234.008 to read as follows:

Sec. 234.001. ESTABLISHMENT AND OPERATION OF STATE CASE [~~UNIFIED~~] REGISTRY AND STATE DISBURSEMENT UNIT. (a) The Title IV-D agency shall establish and operate a [~~unified~~] state case registry and state disbursement unit meeting the requirements of 42 U.S.C. Sections 654a(e) and 654b.

(b) The state case registry [~~and unit~~] shall[~~:~~

[~~(1)~~] maintain records of child support orders in Title IV-D cases and in other cases in which a child support order has been established or modified in this state on or after October 1, 1998.[~~;~~]

(c) The state disbursement unit shall:

(1) [~~(2)~~] receive, maintain, and furnish records of child support payments in Title IV-D cases and other cases as required by law;

(2) forward [~~(3) in a Title IV-D case, monitor support payments and initiate appropriate enforcement actions immediately on the occurrence of a delinquency in payment;~~

[~~(4) distribute~~] child support payments as required by law; [~~and~~]

(3) [~~(5)~~] maintain [~~custody of official~~] child support payment records made through the state [~~in the registry and~~] disbursement unit; and

(4) make available to a local registry each day in a manner determined by the Title IV-D agency with the assistance of the work group established under Section 234.003 the following information:

(A) the cause number of the suit under which withholding is required;

(B) the payor's name and social security number;

(C) the payee's name and, if available, social security number;

(D) the date the disbursement unit received the payment;

(E) the amount of the payment; and

(F) the instrument identification information.

Sec. 234.002. INTEGRATED SYSTEM FOR CHILD SUPPORT AND MEDICAL SUPPORT ENFORCEMENT. The statewide integrated system for child support and medical support enforcement under Chapter 231 shall be part of the [~~unified~~] state case registry and state disbursement unit authorized by this subchapter.

Sec. 234.003. WORK GROUP; COOPERATION REQUIRED. (a) The Title IV-D agency shall convene a work group to develop procedures for the establishment and operation of the [~~unified~~] state case registry and state disbursement unit. The work group shall consist of representatives of the judiciary, district clerks, domestic relations offices, and the bureau of vital statistics, as well as other county and state agencies, and other appropriate entities, identified by the Title IV-D agency. To the extent possible, the work group shall consolidate the reporting of information relating to court orders required of clerks of courts under this title.

(b) The work group shall meet at least quarterly [~~Title IV-D agency shall, in cooperation with the work group established under this section, adopt rules and prescribe forms to implement this subchapter~~].

(c) A work group member or the member's designee may not receive compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing the member's duties under this section.

(d) The work group is not an advisory committee as defined by Section 2110.001, Government Code. Chapter 2110, Government Code, does not apply to the work group.

(e) This section expires December 31, 2000.

Sec. 234.006. EFFECTIVE DATE AND PROCEDURES. The Title IV-D agency shall, in cooperation with the work group established under Section 234.003, adopt rules, in compliance with federal law, that establish the definitions for, and the date of and the procedures for:

(1) the operation of the state case registry and the state disbursement unit; and

(2) the return of payments made in error or delivered to the state disbursement unit with insufficient information for disbursement.

Sec. 234.007. NOTICE OF PLACE OF PAYMENT. (a) The Title IV-D agency shall notify the courts that the state disbursement unit has been established. After

receiving notice of the establishment of the state disbursement unit, a court that orders income to be withheld for child support shall order that all income withheld for child support be paid to the state disbursement unit.

(b) In order to redirect payments from a local registry to the state disbursement unit after the date of the establishment of the state disbursement unit, the Title IV-D agency shall issue a notice of place of payment informing the obligor, obligee, and employer that income withheld for child support is to be paid to the state disbursement unit.

(c) A copy of the notice under Subsection (b) shall be filed with the court of continuing jurisdiction and with the local child support registry.

(d) The notice under Subsection (b) must include:

(1) the name of the child for whom support is ordered and of the person to whom support is ordered by the court to be paid;

(2) the style and cause number of the case in which support is ordered; and

(3) instructions for the payment of ordered support to the state disbursement unit.

(e) On receipt of a copy of the notice under Subsection (b), the clerk of the court shall file the notice in the appropriate case file.

Sec. 234.008. DEPOSIT, DISTRIBUTION, AND ISSUANCE OF PAYMENTS. (a) Not later than the second business day after the date the state disbursement unit receives a child support payment, the state disbursement unit shall distribute the payment to the Title IV-D agency or the obligee.

(b) The state disbursement unit shall deposit daily all child support payments in a trust fund with the state comptroller. Subject to the agreement of the comptroller, the state disbursement unit may issue checks from the trust fund.

SECTION 65. Section 192.002, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) The social security numbers of the mother and father recorded on the form shall be made available to the federal Social Security Administration.

SECTION 66. Section 192.0051, Health and Safety Code, is amended to read as follows:

Sec. 192.0051. REPORT OF DETERMINATION [~~CERTIFICATE~~] OF PATERNITY. (a) A report [~~declaration~~] of each determination of paternity in this state shall be filed with the state registrar.

(b) On a determination of paternity, the petitioner shall provide the clerk of the court in which the decree was granted with the information necessary to prepare the report [~~declaration~~]. The clerk shall:

(1) report the determination [~~prepare the declaration~~] on a form or in a manner provided by the department; and

(2) complete the report [~~declaration~~] immediately after the decree becomes final.

(c) On completion of the report [~~Not later than the 10th day of each month~~], the clerk of the court shall forward to the state registrar the report [~~a declaration~~] for each decree that became final in that court [~~during the preceding month~~].

SECTION 67. Section 192.006, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) In accordance with board rules, a supplementary birth certificate may be filed for a person whose parentage has been determined by an acknowledgment of paternity.

SECTION 68. Subchapter A, Chapter 192, Health and Safety Code, is amended by adding Section 192.012 to read as follows:

Sec. 192.012. RECORD OF ACKNOWLEDGMENT OF PATERNITY. (a) If the mother of a child is not married to the father of the child, a person listed in Section 192.003 who is responsible for filing the birth certificate shall:

(1) provide an opportunity for the child's mother and putative father to sign an acknowledgment of paternity as provided by Subchapter C, Chapter 160, Family Code; and

(2) provide oral and written information to the child's mother and putative father about:

(A) establishing paternity, including an explanation of the rights and responsibilities that result from acknowledging paternity; and

(B) the availability of child support services.

(b) The local registrar shall transmit the acknowledgment of paternity to the state registrar.

(c) The state registrar shall record the information contained in the acknowledgment of paternity and transmit the information to the Title IV-D agency.

(d) The Title IV-D agency may use the information contained in the acknowledgment of paternity for any purpose directly connected with providing child support services under Chapter 231, Family Code.

SECTION 69. Section 193.001, Health and Safety Code, is amended by amending Subsections (b) and (c) and adding Subsection (d) to read as follows:

(b) The social security number shall be recorded on the death certificate and on any other records related to the death.

(c) The department shall require death certificates and fetal death certificates to include the name of the place and the specific number of the plot, crypt, lawn crypt, or niche in which a decedent's remains will be interred or, if the remains will not be interred, the place and manner of other disposition.

(d) [~~(c)~~] The bureau of vital statistics and each local registrar shall make the information provided under Subsection (c) [~~(b)~~] available to the public and may charge a fee in an amount prescribed under Section 191.0045 for providing that service.

SECTION 70. Section 31.0032(a), Human Resources Code, is amended to read as follows:

(a) Except as provided by Section 231.115, Family Code, as added by Chapter 911, Acts of the 75th Legislature, Regular Session, 1997, if [~~If~~] after an investigation the department or the Title IV-D agency determines that a person is not complying with a requirement of the responsibility agreement required under Section 31.0031, the department immediately shall apply appropriate sanctions or penalties regarding the assistance provided to or for that person under this chapter.

SECTION 71. Sections 31.0033(a) and (c), Human Resources Code, are amended to read as follows:

(a) If the department or Title IV-D agency determines that penalties and sanctions should be applied under Section 31.0032, the person determined to have not complied or, if different, the person receiving the financial assistance may request a hearing to show good cause for noncompliance not later than the 13th day after the date on which notice is received under Section 31.0032. On a showing of good cause for noncompliance, sanctions may not be imposed.

(c) If the department finds that good cause for noncompliance was not shown at a hearing, the department shall apply appropriate sanctions or penalties to or for that

person until the department, or the Title IV-D agency in a Title IV-D case, determines that the person is in compliance with the terms of the responsibility agreement.

SECTION 72. Section 411.127, Government Code, is amended to read as follows:

Sec. 411.127. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: APPLICANTS FOR EMPLOYMENT. (a) The Title IV-D agency [~~attorney general~~] is entitled to obtain from the Department of Public Safety, the Federal Bureau of Investigation identification division, or another law enforcement agency criminal history record information maintained by the department or agency that relates to a person who is an applicant for a position of employment with the Title IV-D agency, or an applicant to serve as a consultant, intern, or volunteer, [~~attorney general~~] that involves the performance of duties under Chapter 231, Family Code. The Title IV-D agency [~~attorney general~~] may not request the information unless a supervisory employee of the agency [~~attorney general's office~~] has recommended that the applicant be hired or serve as an intern or volunteer.

(b) Criminal history record information obtained by the Title IV-D agency [~~attorney general~~] under Subsection (a) may not be released or disclosed to any person except on court order or with the consent of the person who is the subject of the criminal history record information.

(c) The Title IV-D agency [~~attorney general~~] shall destroy criminal history record information that relates to a person after the information is used for its authorized purpose.

(d) In this section, "Title IV-D agency" has the meaning assigned by Section 101.033, Family Code.

SECTION 73. (a) The attorney general shall redesign and improve the child support enforcement program.

(b) The involvement of the attorney general's office related to the enforcement of child support is subject to review under Chapter 325, Government Code (Texas Sunset Act), as if the attorney general's involvement in matters relating to the enforcement of child support were a state agency under that chapter. The Sunset Advisory Commission may review only the attorney general's:

(1) implementation of child support enforcement functions, including functions affected by legislation enacted by the 76th Legislature, Regular Session, 1999; and

(2) redesign and improvement of the child support enforcement program.

(c) In determining whether the attorney general has improved the child support enforcement program, the Sunset Advisory Commission shall analyze the degree to which the attorney general has:

(1) improved all elements of the child support program;

(2) resolved computer system implementation issues;

(3) complied with federal welfare reform mandates; and

(4) improved customer service and increased client satisfaction.

(d) Not later than October 15, 2000, the attorney general's child support enforcement division shall report to the standing committees of the senate and house of representatives having primary jurisdiction over child support issues and the Sunset Advisory Commission regarding the significant improvements that have been made in its performance and operation of the child support enforcement program. The attorney general's child support enforcement division shall collect information and report on the criteria described by Subsection (c) of this section.

(e) The involvement of the attorney general's office in matters related to child support enforcement is not abolished under Chapter 325, Government Code (Texas Sunset Act).

(f) To the extent Chapter 325, Government Code (Texas Sunset Act), imposes a duty on a state agency under review, the attorney general's office shall perform the duty as it applies to the attorney general's involvement in matters related to child support enforcement.

(g) The Sunset Advisory Commission shall report its findings as required under Section 325.010, Government Code, to the 77th Legislature, Regular Session, 2001.

SECTION 74. (a) The attorney general's child support enforcement division shall investigate the use of alternative sources of revenue to operate the child support program. As part of the investigation, the division shall perform a cost-benefit analysis of charging fees, including a paternity establishment fee, a service fee, and a fee charged for a check or money order not paid because of insufficient funds. The cost-benefit analysis must include analysis of:

(1) the cost of reprogramming the computer system to handle the imposition and collection of fees in an efficient manner;

(2) the estimated administrative cost of collecting fees;

(3) the projected revenues from at least two fee levels; and

(4) the impact of the alternative fee levels on demand for Title IV-D services.

(b) The division shall report its findings under this section not later than October 15, 2000, to the Sunset Advisory Commission and the standing committees of the senate and house of representatives having primary jurisdiction over child support issues.

SECTION 75. Sections 158.505(c) and 160.002(c), Family Code, and Sections 192.003(e), (f), and (g), Health and Safety Code, are repealed.

SECTION 76. (a) This Act takes effect September 1, 1999.

(b) The interagency work group shall develop the interagency partnership strategy required by Section 231.011, Family Code, as added by this Act, not later than January 1, 2000.

(c) The county advisory work group shall complete the state-county child support improvement plan required by Section 231.012, Family Code, as added by this Act, not later than January 1, 2000.

(d) The Title IV-D agency and the Texas Department of Human Services shall update the memorandum of understanding adopted under Section 231.305, Family Code, not later than January 1, 2000.

(e) The change in law made by this Act by the amendment of Section 160.004, Family Code, and the addition of Section 233.0095, Family Code, applies only to a suit affecting the parent-child relationship providing for the determination of paternity that is filed or a child support review that is commenced by the Title IV-D agency on or after the effective date of this Act. A suit filed or review commenced before the effective date of this Act is governed by the law in effect on the date the suit was filed or the review was commenced, and the former law is continued in effect for that purpose.

SECTION 77. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend **CSSB 368** as follows:

(1) In SECTION 20 of the bill, in Section 158.103(5), Family Code (house committee printing, page 14, line 15), strike "and".

(2) In SECTION 20 of the bill, in Section 158.103(6), Family Code (house committee printing, page 14, line 18), strike "~~; and~~" and substitute "]; and".

(3) In SECTION 20 of the bill, at the end of Section 158.103, Family Code (house committee printing, page 14, line 19) strike "[~~(7)~~" and substitute the following:

"(7) whether the child is to be enrolled in health insurance coverage available through the obligor's employment [".

Floor Amendment No. 2

Amend **CSSB 368** as follows:

(1) In SECTION 64 of the bill (house committee printing, page 63, line 3), strike "and 234.008" and substitute "234.008, and 234.009".

(2) In SECTION 64 of the bill (house committee printing, page 67, between lines 3 and 4), insert Section 234.009, Family Code, to read as follows:

Sec. 234.009. OFFICIAL CHILD SUPPORT PAYMENT RECORD. (a) The record of child support payments maintained by a local registry is the official record of a payment received directly by the local registry.

(b) The record of child support payments maintained by the state disbursement unit is the official record of a payment received directly by the unit.

(c) After the date child support payments formerly received by a local registry are redirected to the state disbursement unit, a local registry may accept a record of payments furnished by the state disbursement unit and may add the payments to the record of payments maintained by the local registry so that a complete payment record is available for use by the court.

(d) If the local registry does not add payments received by the state disbursement unit to the record maintained by the registry as provided by Subsection (c), the official record of child support payments consists of the record maintained by the local registry for payments received directly by the registry and the record maintained by the state disbursement unit for payments received directly by the unit.

Amendment No. 3

Amend **CSSB 368** as follows:

On page 4, line 13, through page 6, line 4, strike Section 5 and substitute the following:

SECTION 5. Section 111.001, Family Code, is amended to read as follows:

Sec. 111.001. REVIEW OF GUIDELINES [~~APPOINTMENT OF ADVISORY COMMITTEE~~]. (a) Prior to each regular legislative session, the standing committees of each house of the legislature having jurisdiction over family law issues shall review and, if necessary, recommend revisions to the guidelines for possession of and access to a child under Chapter 153 and for support of a child under Chapter 154. The committee shall report the results of the review and shall include any recommended revisions in the committee's report to the Legislature. [~~The supreme court shall appoint an advisory committee consisting of not fewer than 25 persons, composed of legislators, judges, lawyers, and laypersons, to assist the legislature in making a periodic review of and suggested revisions, if any, to the guidelines in this title:~~]

[~~(1) for the possession of a child by a parent under Chapter 153; and~~
~~(2) for the support of a child under Chapter 154.~~]

[~~(b) Not fewer than five members of this committee must be or have been:~~
~~(1) managing conservators;~~
~~(2) possessory conservators;~~
~~(3) ordered to pay child support; or~~
~~(4) entitled to receive child support.~~]

[~~(c) The guidelines shall be reviewed at least once every four years.~~]

(b) Not later than December 1 of each even-numbered year, the Title IV-D agency shall submit a report to the standing committees of each house of the legislature having jurisdiction over family law issues for use by the committee in conducting the review required by Subsection (a). The report must contain:

(1) economic data obtained from the United States Department of Agriculture on the cost of raising children;

(2) an analysis of case data on the application of and deviations from the child support guidelines; and

(3) a summary of any federal legislation enacted since the date of the last review.

Floor Amendment No. 4

Amend **CSSB 368** by adding the following appropriately numbered SECTIONS to the bill and renumbering the existing SECTIONS of the bill appropriately:

SECTION ___. Section 521.044(f), Transportation Code, is amended by adding at the end of the section, "unless required by Federal Law".

SECTION _____. Section 521.142(g), Transportation Code, is amended by adding at the end of the section, "unless required by Federal Law".

Floor Amendment No. 5

Amend **CSSB 368** as follows:

(1) Add SECTION ___ to the bill to read as follows:

SECTION __. Sections 156.402(a) and (b), Family Code, are amended to read as follows:

(a) The court may consider the child support guidelines for single and multiple families under Chapter 154 [~~in Chapter 153~~] to determine whether there has been a material or substantial change of circumstances under this chapter that warrants a modification of an existing child support order if the modification is in the best interest of the child.

(b) If the amount of support contained in the order does not substantially conform with the guidelines for single and multiple families under Chapter 154, the court may modify the order to substantially conform with the guidelines if the modification is in the best interest of the child. A court may consider other relevant evidence in addition to the factors listed in the guidelines.

(2) Add SECTION ___ to the bill to read as follows:

SECTION ___. Section 156.406, Family Code, is amended to read as follows:

Sec. 156.406. USE OF GUIDELINES FOR CHILDREN IN MORE THAN ONE HOUSEHOLD. In applying the child support guidelines in a suit under this subchapter, if the obligor has the duty to support children in more than one household, the court shall apply the percentage guidelines for multiple families under Chapter 154 [~~in Chapter 153~~].

Floor Amendment No. 1 on Third Reading

Amend **CSSB 368**, on third reading, as follows:

(1) Strike the SECTION of the bill amending Section 521.044(f), Transportation Code, and substitute the following appropriately numbered section:

SECTION __. (a) Section 521.044, Transportation Code, is amended by adding Subsection (f) to read as follows:

(f) This section does not prohibit the department from requiring an applicant for a driver's license to provide the applicant's social security number.

(b) If Senate Bill No. 370, Acts of the 76th Legislature, Regular Session, 1999, is enacted and becomes law, and that bill contains a provision that amends Section 521.044, Transportation Code, to prohibit that section from authorizing the Texas Department of Public Safety to require an applicant for a driver's license to provide the applicant's social security number, that provision shall have no effect.

(2) Strike the SECTION of the bill amending Section 521.142(g), Transportation Code, and substitute the following appropriately numbered section:

SECTION __. (a) Section 521.142, Transportation Code, is amended by adding Subsection (g) to read as follows:

(g) The department may require an applicant to provide the applicant's social security number only for a purpose permitted by Section 521.044.

(b) If Senate Bill No. 370, Acts of the 76th Legislature, Regular Session, 1999, is enacted and becomes law, and that bill contains a provision that amends Section 521.142, Transportation Code, to prohibit the Texas Department of Public Safety from requiring an applicant for a driver's license to provide the applicant's social security number, that provision shall have no effect.

(3) Renumber the sections of the bill as appropriate.

Floor Amendment No. 2 on Third Reading

Amend **CSSB 368** on third reading by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION __. Section 203.005(a), Family Code, is amended to read as follows:

(a) The administering entity may authorize a domestic relations office to assess and collect:

(1) an initial operations fee not to exceed $15 to be paid to the domestic relations office on the filing of a suit;

(2) in a county that has a child support enforcement cooperative agreement with the Title IV-D agency, an initial child support service fee not to exceed $36 to be paid to the domestic relations office on the filing of a suit;

(3) a reasonable application fee to be paid by an applicant requesting services from the office;

(4) [~~(3)~~] a reasonable attorney's fee and court costs incurred or ordered by the court;

(5) [~~(4)~~] a monthly child support service fee not to exceed $3 to be paid by a managing conservator and possessory conservator for whom the domestic relations office acts as a local child support registry;

(6) [~~(5)~~] community supervision fees as provided by Chapter 157 if community supervision officers are employed by the domestic relations office; and

(7) [~~(6)~~] a reasonable fee for preparation of a court-ordered social study.

SECTION ___. Section 110.006, Family Code, is amended to read as follows:

Sec. 110.006. DOMESTIC RELATIONS OFFICE FEES [~~OPERATIONS FEE~~]. If an administering entity of a domestic relations office adopts an initial operations fee under Section 203.005(a)(1) or an initial child support service fee under Section 203.005(a)(2), the clerk of the court shall collect the fee at the time the suit is filed and send the fee to the domestic relations office.

The amendments were read.

On motion of Senator Harris, the Senate concurred in the House amendments to **SB 368** by a viva voce vote.

(President in Chair)

SENATE BILL 382 WITH HOUSE AMENDMENTS

Senator Duncan called **SB 382** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment No. 1

Amend **SB 382** by adding an appropriately numbered section to read as follows:

SECTION ___. Subchapter A, Chapter 2001, Government Code, is amended by adding Section 2001.006 to read as follows:

Sec. 2001.006. ACTIONS PREPARATORY TO IMPLEMENTATION OF STATUTE OR RULE. (a) In this section:

(1) "State agency" means a department, board, commission, committee, council, agency, office, or other entity in the executive, legislative, or judicial branch of state government. The term includes an institution of higher education as defined by Section 61.003, Education Code, and includes those entities excluded from the general definition of "state agency" under Section 2001.003(7).

(2) Legislation is considered to have "become law" if it has been passed by the legislature and:

(A) the governor has approved it;

(B) the governor has filed it with the secretary of state, having neither approved nor disapproved it;

(C) the time for gubernatorial action has expired under Section 14, Article IV, Texas Constitution, the governor having neither approved nor disapproved it; or

(D) the governor has disapproved it and the legislature has overridden the governor's disapproval in accordance with Section 14, Article IV, Texas Constitution.

(b) In preparation for the implementation of legislation that has become law but has not taken effect, a state agency may adopt a rule or take other administrative action that the agency determines is necessary or appropriate and that the agency would have been authorized to take had the legislation been in effect at the time of the action.

(c) In preparation for the implementation of a rule that has been finally adopted by a state agency but has not taken effect, a state agency may take administrative action that the agency determines is necessary or appropriate and that the agency would have been authorized to take had the rule been in effect at the time of the action.

(d) A rule adopted under Subsection (b) may not take effect earlier than the legislation being implemented takes effect. Administrative action taken under Subsection (b) or (c) may not result in implementation or enforcement of the applicable legislation or rule before the legislation or rule takes effect.

Floor Amendment No. 2

Amend **SB 382** by inserting the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS accordingly:

SECTION ____. Section 2006.001, Government Code, is amended to read as follows:

Sec. 2006.001. DEFINITIONS. In this subchapter:

(1) "Micro-business" means a legal entity, including a corporation, partnership, or sole proprietorship, that:

(A) is formed for the purpose of making a profit;

(B) is independently owned and operated; and

(C) has not more than 20 employees.

(2) "Small business" means a legal entity, including a corporation, partnership, or sole proprietorship, that:

(A) is formed for the purpose of making a profit;

(B) is independently owned and operated; and

(C) has fewer than 100 employees or less than $1 million in annual gross receipts.

(3) [~~(2)~~] "State agency" means a department, board, bureau, commission, division, office, council, or other agency of the state.

SECTION ___. Sections 2006.002(a) and (f), Government Code, are amended to read as follows:

(a) A state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses shall reduce that effect if doing so is legal and feasible considering the purpose of the statute under which the rule is to be adopted.

(f) To reduce an adverse effect of rules on micro-businesses, a state agency shall [~~may~~] adopt provisions concerning micro-businesses that are uniform with [~~similar to~~] those outlined in Subsections (b)-(d) [~~Subsection (b)~~] for small businesses.

The amendments were read.

On motion of Senator Duncan, the Senate concurred in the House amendments to **SB 382** by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 3693

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 3693** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 3693** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Fraser, Chair; Carona, Gallegos, Jackson, and Shapiro.

HOUSE BILL 713 RECOMMITTED

On motion of Senator Ellis and by unanimous consent, the Conference Committee Report on **HB 713** was recommitted to the conference committee.

SENATE RESOLUTION 1159

Senator Brown offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 76th Legislature, Regular Session, 1999, That Senate Rule 12.03 is suspended, as provided by Senate Rule 12.08, to enable the conference committee appointed to resolve the differences between the house and senate versions of **SB 365**, relating to the continuation and the functions of the Texas Department of Criminal Justice, the administration of the Private Sector Prison Industries Oversight Authority, and the administration of the Texas Council on Offenders with Mental Impairments, to consider and take action on the following matter:

Senate Rules 12.03(3) and (4) are suspended to permit the committee to add a new article to read as follows:

ARTICLE 4

SECTION 4.01. The Health and Safety Code is amended by adding Title 11 to read as follows:

TITLE 11. CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

CHAPTER 841. CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 841.001. LEGISLATIVE FINDINGS. The legislature finds that a small but extremely dangerous group of sexually violent predators exists and that those predators have a behavioral abnormality that is not amenable to traditional mental illness treatment modalities and that makes the predators likely to engage in repeated predatory acts of sexual violence. The legislature finds that the existing involuntary commitment provisions of Subtitle C, Title 7, are inadequate to address the risk of repeated predatory behavior that sexually violent predators pose to society. The legislature further finds that treatment modalities for sexually violent predators are different from the traditional treatment modalities for persons appropriate for involuntary commitment under Subtitle C, Title 7. Thus, the legislature finds that a civil commitment procedure for the long-term supervision and treatment of sexually violent predators is necessary and in the interest of the state.

Sec. 841.002. DEFINITIONS. In this chapter:

(1) "Attorney representing the state" means an attorney employed by the prison prosecution unit to initiate and pursue a civil commitment proceeding under this chapter.

(2) "Behavioral abnormality" means a congenital or acquired condition that, by affecting a person's emotional or volitional capacity, predisposes the person to commit a sexually violent offense, to the extent that the person becomes a menace to the health and safety of another person.

(3) "Case manager" means a person employed by or under contract with the council to perform duties related to outpatient treatment and supervision of a person committed under this chapter.

(4) "Council" means the Interagency Council on Sex Offender Treatment.

(5) "Predatory act" means an act that is committed for the purpose of victimization and that is directed toward:

(A) a stranger;

(B) a person of casual acquaintance with whom no substantial relationship exists; or

(C) a person with whom a relationship has been established or promoted for the purpose of victimization.

(6) "Repeat sexually violent offender" has the meaning assigned by Section 841.003.

(7) "Secure correctional facility" means a county jail or a confinement facility operated by or under contract with any division of the Texas Department of Criminal Justice.

(8) "Sexually violent offense" means:

(A) an offense under Section 21.11(a)(1), 22.011, or 22.021, Penal Code;

(B) an offense under Section 20.04(a)(4), Penal Code, if the defendant committed the offense with the intent to violate or abuse the victim sexually;

(C) an offense under Section 30.02, Penal Code, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with the intent to commit an offense listed in Paragraph (A) or (B);

(D) an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense listed in Paragraph (A), (B), or (C);

(E) an offense under prior state law that contains elements substantially similar to the elements of an offense listed in Paragraph (A), (B), (C), or (D); or

(F) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense listed in Paragraph (A), (B), (C), or (D).

(9) "Sexually violent predator" has the meaning assigned by Section 841.003.

(10) "Tracking service" means an electronic monitoring service, global positioning satellite service, or other appropriate technological service that is designed to track a person's location.

Sec. 841.003. SEXUALLY VIOLENT PREDATOR. (a) A person is a sexually violent predator for the purposes of this chapter if the person:

(1) is a repeat sexually violent offender; and

(2) suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence.

(b) A person is a repeat sexually violent offender for the purposes of this chapter if the person is convicted of more than one sexually violent offense and a sentence is imposed for at least one of the offenses or if:

(1) the person:

(A) is convicted of a sexually violent offense, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the person was subsequently discharged from community supervision;

(B) enters a plea of guilty or nolo contendere for a sexually violent offense in return for a grant of deferred adjudication;

(C) is adjudged not guilty by reason of insanity of a sexually violent offense; or

(D) is adjudicated by a juvenile court as having engaged in delinquent conduct constituting a sexually violent offense and is committed to the Texas Youth Commission under Section 54.04(d)(3) or (m), Family Code; and

(2) after the date on which under Subdivision (1) the person is convicted, receives a grant of deferred adjudication, is adjudged not guilty by reason of insanity, or is adjudicated by a juvenile court as having engaged in delinquent conduct, the person commits a sexually violent offense for which the person:

(A) is convicted, but only if the sentence for the offense is imposed; or

(B) is adjudged not guilty by reason of insanity.

Sec. 841.004. PRISON PROSECUTION UNIT. A special division of the prison prosecution unit, separate from that part of the unit responsible for prosecuting criminal cases, is responsible for initiating and pursuing a civil commitment proceeding under this chapter.

Sec. 841.005. OFFICE OF STATE COUNSEL FOR OFFENDERS. The Office of State Counsel for Offenders shall represent a person subject to a civil commitment proceeding under this chapter.

Sec. 841.006. APPLICATION OF CHAPTER. This chapter does not:

(1) prohibit a person committed under this chapter from filing at any time a petition for release under this chapter; or

(2) create for the committed person a cause of action against another person for failure to give notice within a period required by Subchapter B.

Sec. 841.007. DUTIES OF INTERAGENCY COUNCIL ON SEX OFFENDER TREATMENT. The Interagency Council on Sex Offender Treatment is responsible for providing appropriate and necessary treatment and supervision through the case management system.

[Sections 841.008-841.020 reserved for expansion]

SUBCHAPTER B. NOTICE OF POTENTIAL PREDATOR; INITIAL DETERMINATIONS

Sec. 841.021. NOTICE OF POTENTIAL PREDATOR. (a) Before the person's anticipated release date, the Texas Department of Criminal Justice shall give to the multidisciplinary team established under Section 841.022 written notice of the anticipated release of a person who:

(1) is serving a sentence for a sexually violent offense; and

(2) may be a repeat sexually violent offender.

(b) Before the person's anticipated discharge date, the Texas Department of Mental Health and Mental Retardation shall give to the multidisciplinary team established under Section 841.022 written notice of the anticipated discharge of a person who:

(1) is committed to the department after having been adjudged not guilty by reason of insanity of a sexually violent offense; and

(2) may be a repeat sexually violent offender.

(c) The Texas Department of Criminal Justice or the Texas Department of Mental Health and Mental Retardation, as appropriate, shall give the notice described by Subsection (a) or (b) not later than the first day of the 16th month before the person's anticipated release or discharge date, but under exigent circumstances may give the

notice at any time before the anticipated release or discharge date. The notice must contain the following information:

(1) the person's name, identifying factors, anticipated residence after release or discharge, and criminal history;

(2) documentation of the person's institutional adjustment and actual treatment; and

(3) an assessment of the likelihood that the person will commit a sexually violent offense after release or discharge.

Sec. 841.022. MULTIDISCIPLINARY TEAM. (a) The executive director of the Texas Department of Criminal Justice and the commissioner of the Texas Department of Mental Health and Mental Retardation jointly shall establish a multidisciplinary team to review available records of a person referred to the team under Section 841.021. The team must include:

(1) two persons from the Texas Department of Mental Health and Mental Retardation;

(2) three persons from the Texas Department of Criminal Justice, one of whom must be from the victim services office of that department;

(3) one person from the Texas Department of Public Safety; and

(4) one person from the council.

(b) The multidisciplinary team may request the assistance of other persons in making a determination under this section.

(c) Not later than the 30th day after the date the multidisciplinary team receives notice under Section 841.021(a) or (b), the team shall:

(1) determine whether the person is a repeat sexually violent offender and whether the person is likely to commit a sexually violent offense after release or discharge;

(2) give notice of that determination to the Texas Department of Criminal Justice or the Texas Department of Mental Health and Mental Retardation, as appropriate; and

(3) recommend the assessment of the person for a behavioral abnormality, as appropriate.

Sec. 841.023. ASSESSMENT FOR BEHAVIORAL ABNORMALITY. (a) Not later than the 30th day after the date of a recommendation under Section 841.022(c), the Texas Department of Criminal Justice or the Texas Department of Mental Health and Mental Retardation, as appropriate, shall determine whether the person suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence. To aid in the determination, the department required to make the determination shall use an expert to examine the person. That department may contract for the expert services required by this subsection. The expert shall make a clinical assessment based on testing for psychopathy, a clinical interview, and other appropriate assessments and techniques to aid in the determination.

(b) If the Texas Department of Criminal Justice or the Texas Department of Mental Health and Mental Retardation determines that the person suffers from a behavioral abnormality, the department making the determination shall give notice of that determination and provide corresponding documentation to the attorney representing the state not later than the 30th day after the date of a recommendation under Section 841.022(c).

[Sections 841.024-841.040 reserved for expansion]

SUBCHAPTER C. PETITION ALLEGING PREDATOR STATUS

Sec. 841.041. PETITION ALLEGING PREDATOR STATUS. (a) If a person is referred to the attorney representing the state under Section 841.023, the attorney may file, in a Montgomery County district court other than a family district court, a petition alleging that the person is a sexually violent predator and stating facts sufficient to support the allegation.

(b) A petition described by Subsection (a) must be filed not later than the 60th day after the date the person is referred to the attorney representing the state.

[Sections 841.042-841.060 reserved for expansion]

SUBCHAPTER D. TRIAL

Sec. 841.061. TRIAL. (a) Not later than the 60th day after the date a petition is filed under Section 841.041, the judge shall conduct a trial to determine whether the person is a sexually violent predator.

(b) The person or the state is entitled to a jury trial on demand. A demand for a jury trial must be filed in writing not later than the 10th day before the date the trial is scheduled to begin.

(c) The person and the state are entitled to an immediate examination of the person by an expert.

(d) Additional rights of the person at the trial include the following:

(1) the right to appear at the trial;

(2) the right to present evidence on the person's behalf;

(3) the right to cross-examine a witness who testifies against the person; and

(4) the right to view and copy all petitions and reports in the court file.

(e) The attorney representing the state may rely on the petition filed under Section 841.041 and supplement the petition with documentary evidence or live testimony.

Sec. 841.062. DETERMINATION OF PREDATOR STATUS. (a) The judge or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. Either the state or the person is entitled to appeal the determination.

(b) A jury determination that the person is a sexually violent predator must be by unanimous verdict.

Sec. 841.063. CONTINUANCE. The judge may continue a trial conducted under Section 841.061 if the person is not substantially prejudiced by the continuance and:

(1) on the request of either party and a showing of good cause; or

(2) on the judge's own motion in the due administration of justice.

Sec. 841.064. MISTRIAL. A trial following a mistrial must begin not later than the 90th day after the date a mistrial was declared in the previous trial, unless the later trial is continued as provided by Section 841.063.

[Sections 841.065-841.080 reserved for expansion]

SUBCHAPTER E. CIVIL COMMITMENT

Sec. 841.081. CIVIL COMMITMENT OF PREDATOR. If at a trial conducted under Subchapter D the judge or jury determines that the person is a sexually violent predator, the judge shall commit the person for outpatient treatment and supervision to be coordinated by the case manager. The outpatient treatment and supervision must begin on the person's release from a secure correctional facility or discharge from a state hospital and must continue until the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

Sec. 841.082. COMMITMENT REQUIREMENTS. (a) Before entering an order directing a person's outpatient civil commitment, the judge shall impose on the person requirements necessary to ensure the person's compliance with treatment and supervision and to protect the community. The requirements shall include:

(1) requiring the person to reside in a particular location;

(2) prohibiting the person's contact with a victim or potential victim of the person;

(3) prohibiting the person's use of alcohol or a controlled substance;

(4) requiring the person's participation in a specific course of treatment;

(5) requiring the person to submit to tracking under a particular type of tracking service and to any other appropriate supervision;

(6) prohibiting the person from changing the person's residence without prior authorization from the judge and from leaving the state without that authorization;

(7) if determined appropriate by the judge, establishing a child safety zone in the same manner as a child safety zone is established by a judge under Section 13B, Article 42.12, Code of Criminal Procedure, and requiring the person to comply with requirements related to the safety zone;

(8) requiring the person to notify the case manager within 48 hours of any change in the person's status that affects proper treatment and supervision, including a change in the person's physical health or job status and including any incarceration of the person; and

(9) any other requirements determined necessary by the judge.

(b) The judge shall provide a copy of the requirements imposed under Subsection (a) to the person and to the council. The council shall provide a copy of those requirements to the case manager and to the service providers.

(c) Immediately after the person's commitment, the judge shall transfer jurisdiction of the case to a district court, other than a family district court, having jurisdiction in the county in which the defendant is residing.

Sec. 841.083. TREATMENT; SUPERVISION. (a) The council shall approve and contract for the provision of a treatment plan for the committed person to be developed by the treatment provider. A treatment plan may include the monitoring of the person with a polygraph or plethysmograph. The treatment provider may receive annual compensation in an amount not to exceed $6,000 for providing the required treatment.

(b) The case manager shall provide supervision to the person. The provision of supervision shall include tracking services and, if required by court order, supervised housing.

(c) The council shall enter into an interagency agreement with the Department of Public Safety for the provision of tracking services. The Department of Public Safety shall contract with the General Services Commission for the equipment necessary to implement those services.

(d) The council shall contract for any necessary supervised housing. The committed person may not be housed for any period of time in a mental health facility, state school, or community center. In this subsection:

(1) "Community center" means a center established under Subchapter A, Chapter 534.

(2) "Mental health facility" has the meaning assigned by Section 571.003.

(3) "State school" has the meaning assigned by Section 531.002.

(e) The case manager shall:

(1) coordinate the outpatient treatment and supervision required by this chapter, including performing a periodic assessment of the success of that treatment and supervision;

(2) make timely recommendations to the judge on whether to allow the committed person to change residence or to leave the state and on any other appropriate matters; and

(3) provide a report to the council, semiannually or more frequently as necessary, which must include:

(A) any known change in the person's status that affects proper treatment and supervision; and

(B) any recommendations made to the judge.

Sec. 841.084. PROVIDER STATUS REPORTS. A treatment provider or a supervision provider other than the case manager shall submit, monthly or more frequently if required by the case manager, a report to the case manager stating whether the person is complying with treatment or supervision requirements, as applicable.

Sec. 841.085. CRIMINAL PENALTY. A person commits an offense if the person violates a requirement imposed under Section 841.082. An offense under this section is a felony of the third degree.

[Sections 841.086-841.100 reserved for expansion]

SUBCHAPTER F. COMMITMENT REVIEW

Sec. 841.101. BIENNIAL EXAMINATION. (a) A person committed under Section 841.081 shall receive a biennial examination. The council shall contract for an expert to perform the examination.

(b) In preparation for a judicial review conducted under Section 841.102, the case manager shall provide a report of the biennial examination to the judge. The report must include consideration of whether to modify a requirement imposed on the person under this chapter and whether to release the person from all requirements imposed on the person under this chapter. The case manager shall provide a copy of the report to the council.

Sec. 841.102. BIENNIAL REVIEW. (a) The judge shall conduct a biennial review of the status of the committed person.

(b) The person is entitled to be represented by counsel at the biennial review, but the person is not entitled to be present at that review.

(c) The judge shall set a hearing if the judge determines at the biennial review that:

(1) a requirement imposed on the person under this chapter should be modified; or

(2) probable cause exists to believe that the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

Sec. 841.103. HEARING. (a) At a hearing set by the judge under Section 841.102, the person and the state are entitled to an immediate examination of the person by an expert.

(b) If the hearing is set under Section 841.102(c)(1), hearsay evidence is admissible if it is considered otherwise reliable by the judge.

(c) If the hearing is set under Section 841.102(c)(2), the committed person is entitled to be present and to have the benefit of all constitutional protections provided

to the person at the initial civil commitment proceeding. On the request of the person or the attorney representing the state, the court shall conduct the hearing before a jury. The burden of proof at that hearing is on the state to prove beyond a reasonable doubt that the person's behavioral abnormality has not changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

[Sections 841.104-841.120 reserved for expansion]

SUBCHAPTER G. PETITION FOR RELEASE

Sec. 841.121. AUTHORIZED PETITION FOR RELEASE. (a) If the case manager determines that the committed person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence, the case manager shall authorize the person to petition the court for release.

(b) The petitioner shall serve a petition under this section on the court and the attorney representing the state.

(c) The judge shall set a hearing on a petition under this section not later than the 30th day after the date the judge receives the petition. The petitioner and the state are entitled to an immediate examination of the petitioner by an expert.

(d) On request of the petitioner or the attorney representing the state, the court shall conduct the hearing before a jury.

(e) The burden of proof at the hearing is on the state to prove beyond a reasonable doubt that the petitioner's behavioral abnormality has not changed to the extent that the petitioner is no longer likely to engage in a predatory act of sexual violence.

Sec. 841.122. RIGHT TO FILE UNAUTHORIZED PETITION FOR RELEASE. On a person's commitment and annually after that commitment, the case manager shall provide the person with written notice of the person's right to file with the court and without the case manager's authorization a petition for release.

Sec. 841.123. REVIEW OF UNAUTHORIZED PETITION FOR RELEASE. (a) If the committed person files a petition for release without the case manager's authorization, the person shall serve the petition on the court and the attorney representing the state.

(b) On receipt of a petition for release filed by the committed person without the case manager's authorization, the judge shall attempt as soon as practicable to review the petition.

(c) Except as provided by Subsection (d), the judge shall deny without a hearing a petition for release filed without the case manager's authorization if the petition is frivolous or if:

(1) the petitioner previously filed without the case manager's authorization another petition for release; and

(2) the judge determined on review of the previous petition or following a hearing that:

(A) the petition was frivolous; or

(B) the petitioner's behavioral abnormality had not changed to the extent that the petitioner was no longer likely to engage in a predatory act of sexual violence.

(d) The judge is not required to deny a petition under Subsection (c) if probable cause exists to believe that the petitioner's behavioral abnormality has changed to the extent that the petitioner is no longer likely to engage in a predatory act of sexual violence.

Sec. 841.124. HEARING ON UNAUTHORIZED PETITION FOR RELEASE. (a) If as authorized by Section 841.123 the judge does not deny a petition for release filed by the committed person without the case manager's authorization, the judge shall conduct as soon as practicable a hearing on the petition.

(b) The petitioner and the state are entitled to an immediate examination of the person by an expert.

(c) On request of the petitioner or the attorney representing the state, the court shall conduct the hearing before a jury.

(d) The burden of proof at the hearing is on the state to prove beyond a reasonable doubt that the petitioner's behavioral abnormality has not changed to the extent that the petitioner is no longer likely to engage in a predatory act of sexual violence.

[Sections 841.125-841.140 reserved for expansion]

SUBCHAPTER H. MISCELLANEOUS PROVISIONS

Sec. 841.141. RULEMAKING AUTHORITY. (a) The council by rule shall administer this chapter. Rules adopted by the council under this section must be consistent with the purposes of this chapter.

(b) The council by rule shall develop standards of care and case management for persons committed under this chapter.

Sec. 841.142. RELEASE OR EXCHANGE OF INFORMATION. (a) To protect the public and to enable a determination relating to whether a person is a sexually violent predator, any entity that possesses relevant information relating to the person shall release the information to an entity charged with making a determination under this chapter.

(b) To protect the public and to enable the provision of supervision and treatment to a person who is a sexually violent predator, any entity that possesses relevant information relating to the person shall release the information to the case manager.

(c) On the written request of any attorney for another state or a political subdivision in another state, the Texas Department of Criminal Justice, the council, a service provider contracting with one of those agencies, the multidisciplinary team, and the attorney representing the state shall release to the attorney any available information relating to a person that is sought in connection with an attempt to civilly commit the person as a sexually violent predator in another state.

(d) To protect the public and to enable a determination relating to whether a person is a sexually violent predator or to enable the provision of supervision and treatment to a person who is a sexually violent predator, the Texas Department of Criminal Justice, the council, a service provider contracting with one of those agencies, the multidisciplinary team, and the attorney representing the state may exchange any available information relating to the person.

(e) Information subject to release or exchange under this section includes information relating to the supervision, treatment, criminal history, or physical or mental health of the person, as appropriate, regardless of whether the information is otherwise confidential and regardless of when the information was created or collected. The person's consent is not required for release or exchange of information under this section.

Sec. 841.143. REPORT, RECORD, OR STATEMENT SUBMITTED TO COURT. (a) A psychological report, drug and alcohol report, treatment record, diagnostic report, medical record, or victim impact statement submitted to the court under this chapter is part of the record of the court.

(b) Notwithstanding Subsection (a), the report, record, or statement must be sealed and may be opened only:

(1) on order of the judge;

(2) as provided by this chapter; or

(3) in connection with a criminal proceeding as otherwise provided by law.

Sec. 841.144. COUNSEL. (a) At all stages of the civil commitment proceedings under this chapter, a person subject to a proceeding is entitled to the assistance of counsel.

(b) If the person is indigent, the court shall appoint counsel through the Office of State Counsel for Offenders to assist the person.

Sec. 841.145. EXPERT. (a) A person who is examined under this chapter may retain an expert to perform an examination or participate in a civil commitment proceeding on the person's behalf.

(b) On the request of an indigent person examined under this chapter, the judge shall determine whether expert services for the person are necessary. If the judge determines that the services are necessary, the judge shall appoint an expert to perform an examination or participate in a civil commitment proceeding on the person's behalf.

(c) The court shall approve reasonable compensation for expert services rendered on behalf of an indigent person on the filing of a certified compensation claim supported by a written statement specifying:

(1) time expended on behalf of the person;

(2) services rendered on behalf of the person;

(3) expenses incurred on behalf of the person; and

(4) compensation received in the same case or for the same services from any other source.

(d) The court shall ensure that an expert retained or appointed under this section has for purposes of examination reasonable access to a person examined under this chapter, as well as to all relevant medical and psychological records and reports.

Sec. 841.146. CIVIL COMMITMENT PROCEEDING; PROCEDURE AND COSTS. (a) On request, a person subject to a civil commitment proceeding under this chapter and the attorney representing the state are entitled to a jury trial or a hearing before a jury for that proceeding, except for a proceeding set by the judge under Section 841.102(c)(1). The number and selection of jurors are governed by Chapter 33, Code of Criminal Procedure.

(b) A civil commitment proceeding is subject to the rules of procedure and appeal for civil cases.

(c) In an amount not to exceed $1,600, the state shall pay the costs of a civil commitment proceeding conducted under Subchapter D. For any civil commitment proceeding conducted under this chapter, the state shall pay the costs of state or appointed counsel or experts and the costs of the person's outpatient treatment and supervision.

Sec. 841.147. IMMUNITY. The following persons are immune from liability for good faith conduct under this chapter:

(1) an employee or officer of the Texas Department of Criminal Justice, the Texas Department of Mental Health and Mental Retardation, or the council;

(2) a member of the multidisciplinary team established under Section 841.022;

(3) the attorney representing the state; and

(4) a person contracting, appointed, or volunteering to perform a service under this chapter.

SECTION 4.02. Sections 51.13(a) and (b), Family Code, are amended to read as follows:

(a) Except as provided by Subsection (d), an order of adjudication or disposition in a proceeding under this title is not a conviction of crime. Except as provided by Chapter 841, Health and Safety Code, an order of adjudication or disposition [~~, and~~] does not impose any civil disability ordinarily resulting from a conviction or operate to disqualify the child in any civil service application or appointment.

(b) The adjudication or disposition of a child or evidence adduced in a hearing under this title may be used only in subsequent:

(1) proceedings under this title in which the child is a party;

(2) [~~or in subsequent~~] sentencing proceedings in criminal court against the child to the extent permitted by the Texas Code of Criminal Procedure, 1965; or

(3) civil commitment proceedings under Chapter 841, Health and Safety Code.

SECTION 4.03. Section 61.066, Human Resources Code, is amended to read as follows:

Sec. 61.066. COMMITMENT RECORDS. A commitment to the commission may not be received in evidence or used in any way in any proceedings in any court except in:

(1) subsequent proceedings under Title 3[;] of the Family Code against the same child;

(2) [~~, and except in~~] imposing sentence in any criminal proceedings against the same person; or

(3) subsequent civil commitment proceedings under Chapter 841, Health and Safety Code, regarding the same person.

SECTION 4.04. Title 11, Health and Safety Code, as added by this Act, applies only to an individual who on or after January 1, 2000, is serving a sentence in the Texas Department of Criminal Justice or is committed to the Texas Department of Mental Health and Mental Retardation for an offense committed before, on, or after the effective date of this Act.

Explanation: This change is necessary to establish a process for the civil commitment of sexually violent predators.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

BILLS AND RESOLUTIONS SIGNED

The President announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

SB 15, SB 16, SB 17, SB 30, SB 76, SB 133, SB 199, SB 247, SB 323, SB 332, SB 429, SB 435, SB 436, SB 440, SB 486, SB 524, SB 526, SB 556, SB 578, SB 579, SB 590, SB 613, SB 640, SB 682, SB 753, SB 804, SB 848, SB 858, SB 868, SB 931, SB 939, SB 941, SB 959, SB 1034, SB 1070, SB 1074, SB 1092, SB 1157, SB 1176, SB 1215, SB 1235, SB 1297, SB 1323, SB 1340, SB 1351, SB 1443, SB 1486, SB 1547, SB 1576, SB 1586, SB 1589, SB 1610, SB 1628, SB 1641, SB 1656, SB 1657, SB 1664, SB 1730, SB 1742, SB 1747, SB 1780, SB 1807, SB 1822, SB 1851, SB 1853, SB 1870, SB 1881, SCR 7, SCR 34, SCR 37, SCR 38, SCR 59, HB 89, HB 116, HB 163, HB 243, HB 245, HB 261, HB 318, HB 668, HB 703, HB 714, HB 729, HB 756, HB 780, HB 806, HB 834, HB 916, HB 926, HB 969, HB 1086, HB 1103, HB 1137, HB 1176, HB 1350, HB 1510, HB 1517, HB 1538, HB 1575, HB 1583, HB 2152, HB 2162, HB 3324, HB 3809, HCR 265, HCR 288, HCR 289, HB 98, HB 580, HB 734, HB 804, HB 1100, HB 1224, HB 1491, HB 1924, HB 2281, HB 2968, HB 3059, HB 3207, HB 3342, HCR 298, HCR 301, HB 59, HB 108, HB 213, HB 269, HB 319, HB 351, HB 652, HB 722, HB 861, HB 953, HB 965, HB 1027, HB 1066, HB 1070, HB 1078, HB 1082, HB 1097, HB 1148, HB 1159, HB 1184, HB 1211, HB 1217, HB 1219, HB 1333, HB 1337, HB 1353, HB 1354, HB 1374, HB 1425, HB 1432, HB 1436, HB 1522, HB 1545, HB 1562, HB 1563, HB 1586, HB 1604, HB 1616, HB 2059, HB 2109, HB 2135, HB 2146, HB 2151, HB 2164, HB 2166,

HB 2201, HB 2547, HB 2663, HB 2915, HB 2941, HB 2971, HB 3159, HB 3204, HCR 300.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
May 27, 1999

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 307, Honoring coach Bobby Moegle on his retirement as baseball coach of Lubbock's Monterey High School.

HCR 308, Declaring the month of October "Czech Heritage Month" in Texas.

THE HOUSE HAS CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 424 (Viva-voce vote)
HB 618 (130 ayes, 0 nays, 2 present not voting)
HB 731 (Viva-voce vote)
HB 749 (Viva-voce vote)
HB 1014 (Viva-voce vote)
HB 1052 (Viva-voce vote)
HB 1161 (Viva-voce vote)
HB 1248 (Viva-voce vote)
HB 1324 (Viva-voce vote)
HB 1342 (Viva-voce vote)
HB 1398 (Viva-voce vote)
HB 1504 (142 ayes, 0 nays, 1 present not voting)
HB 1851 (Viva-voce vote)
HB 1852 (Viva-voce vote)
HB 1878 (Viva-voce vote)
HB 2022 (Viva-voce vote)
HB 2075 (137 ayes, 0 nays, 2 present not voting)
HB 2148 (Viva-voce vote)
HB 2190 (Viva-voce vote)
HB 2735 (139 ayes, 0 nays, 2 present not voting)
HB 2816 (Viva-voce vote)
HB 2891 (142 ayes, 0 nays, 2 present not voting)
HB 2992 (Viva-voce vote)
HB 3120 (Viva-voce vote)
HB 3173 (Viva-voce vote)

THE HOUSE HAS REFUSED TO CONCUR IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A

CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

HB 571
House Conferees: Hupp - Chair/Keel/King, Phil/Najera/Turner, Bob

HB 826
House Conferees: Greenberg - Chair/Alvarado/Hilbert/Longoria/Wolens

HB 1123
House Conferees: Thompson - Chair/Capelo/Deshotel/Hartnett/Hinojosa

HB 1223
House Conferees: Seaman - Chair/Hunter/Luna/Moreno, Paul/Uher

HB 1283 (Viva-voce vote)
House Conferees: Counts - Chair/Cook/King, Tracy/Lewis, Ron/Walker

HB 1939
House Conferees: Grusendorf - Chair/Goodman/Hinojosa/Nixon/Smith

HB 1997
House Conferees: Palmer - Chair/Haggerty/Reyna, Arthur/Wilson/Yarbrough

HB 2031
House Conferees: Kuempel - Chair/Berman/Driver/Najera/Turner, Bob

HB 2825
House Conferees: Isett - Chair/Green/Hinojosa/Jones, Charles/Smith

HB 2896
House Conferees: Coleman - Chair/Delisi/Gray/Maxey/West

HB 2978
House Conferees: Hamric - Chair/Farrar/Hinojosa/Keel/Nixon

HB 3041
House Conferees: Smithee - Chair/Burnam/Lewis, Glenn/Moreno, Joe/Olivo

HB 3061
House Conferees: Hill - Chair/Alexander/Hawley/Noriega/Siebert

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 1676 (Viva-voce vote)
HB 1945 (Viva-voce vote)
HB 1975 (Viva-voce vote)
HB 2960 (Viva-voce vote)
SB 216 (Viva-voce vote)
SB 287 (Viva-voce vote)
SB 730 (Viva-voce vote)
SB 839 (Viva-voce vote)

THE HOUSE HAS RECOMMITTED THE FOLLOWING MEASURES TO CONFERENCE COMMITTEE:

HB 713 (Viva-voce vote)
SB 371 (Viva-voce vote)

THE HOUSE HAS CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 3189 (Viva-voce vote)
HB 3209 (Viva-voce vote)
HB 3216 (Viva-voce vote)
HB 3431 (Viva-voce vote)
HB 3517 (Viva-voce vote)
HB 3521 (Viva-voce vote)
HB 3543 (141 ayes, 0 nays, 2 present, not voting)
HB 3544 (Viva-voce vote)
HB 3554 (142 ayes, 0 nays, 2 present, not voting)
HB 3573 (144 ayes, 0 nays, 2 present, not voting)
HB 3657 (Viva-voce vote)
HJR 4 (141 ayes, 0 nays, 3 present, not voting)
HJR 62 (142 ayes, 0 nays, 2 present, not voting)

THE HOUSE HAS REFUSED TO CONCUR IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

HB 3211 (Viva-voce vote)
House Conferees: McCall - Chair/Davis, Yvonne/Heflin/Sadler/West

HB 3328
House Conferees: Gallego - Chair/Alexander/Siebert/Turner, Bob/Walker

HB 3470
House Conferees: Olivo - Chair/Christian/Cuellar/Naishtat/Rangel

HB 3549
House Conferees: Heflin - Chair/Craddick/Davis, Yvonne/Keffer/McCall

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

HB 1193 (Viva-voce vote)

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

SENATE BILL 89 WITH HOUSE AMENDMENTS

Senator Madla called **SB 89** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 89** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to municipal annexation; providing penalties.

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

SECTION 1. Subchapter B, Chapter 42, Local Government Code, is amended by adding Section 42.0225 to read as follows:

Sec. 42.0225. EXTRATERRITORIAL JURISDICTION AROUND CERTAIN MUNICIPALLY OWNED PROPERTY. (a) This section applies only to an area owned by a municipality that is:

(1) annexed by the municipality; and

(2) not contiguous to other territory of the municipality.

(b) Notwithstanding Sections 42.021(2)-(5), the annexation of the area expands the extraterritorial jurisdiction of the municipality only to include the area located within one mile of the boundaries of the annexed area.

(c) The extraterritorial jurisdiction of the municipality does not expand following the annexation of territory located only in the municipality's extraterritorial jurisdiction that is created under Subsection (b).

SECTION 2. Subchapter A, Chapter 43, Local Government Code, is amended by adding Section 43.002 to read as follows:

Sec. 43.002. CONTINUATION OF LAND USE. (a) A municipality may not, after annexing an area, prohibit a person from:

(1) continuing to use land in the area in the manner in which the land was being used on the date the annexation proceedings were instituted if the land use was legal at that time; or

(2) beginning to use land in the area in the manner that was planned for the land before the 90th day before the effective date of the annexation if:

(A) one or more licenses, certificates, permits, approvals, or other forms of authorization by a governmental entity were required by law for the planned land use; and

(B) a completed application for the initial authorization was filed with the governmental entity before the date the annexation proceedings were instituted.

(b) For purposes of this section, a completed application is filed if the application includes all documents and other information designated as required by the governmental entity in a written notice to the applicant.

(c) This section does not prohibit a municipality from imposing:

(1) a regulation relating to the location of sexually oriented businesses as that term is defined by Section 243.002;

(2) a municipal ordinance, regulation, or other requirement affecting colonias as that term is defined by Section 2306.581, Government Code;

(3) a regulation relating to preventing imminent destruction of property or injury to persons;

(4) a regulation relating to public nuisances;

(5) a regulation relating to flood control;

(6) a regulation relating to the storage and use of hazardous substances;

(7) a regulation relating to the sale and use of fireworks; or

(8) a regulation relating to the discharge of firearms.

SECTION 3. The heading to Subchapter C, Chapter 43, Local Government Code, is amended to read as follows:

SUBCHAPTER C. ANNEXATION PROCEDURE FOR AREAS ANNEXED UNDER MUNICIPAL ANNEXATION PLAN

SECTION 4. Sections 43.052 and 43.053, Local Government Code, are amended to read as follows:

Sec. 43.052. MUNICIPAL ANNEXATION PLAN REQUIRED. (a) In this section, "special district" means a municipal utility district, water control and

improvement district, or other district created under Section 52, Article III, or Section 59, Article XVI, of the Texas Constitution.

(b) A municipality may annex an area identified in the annexation plan only as provided by this section.

(c) A municipality shall prepare an annexation plan that specifically identifies annexations that may occur beginning on the third anniversary of the date the annexation plan is adopted. The municipality may amend the plan to specifically identify annexations that may occur beginning on the third anniversary of the date the plan is amended.

(d) At any time during which an area is included in a municipality's annexation plan, a municipal utility district or other special district that will be abolished as a result of the annexation, excluding an emergency services district, in which the area is located may not without consent of the municipality:

(1) reduce the tax rate applicable to the area below the effective tax rate or the rollback tax rate calculated under Chapter 26, Tax Code;

(2) voluntarily transfer an asset without consideration; or

(3) enter into a contract for services that extends beyond the three-year annexation plan period other than a contract with another political subdivision for the operation of water, wastewater, and drainage facilities.

(e) A municipality may amend its annexation plan at any time to remove an area proposed for annexation. If, before the end of the 18th month after the month an area is included in the three-year annexation cycle, a municipality amends its annexation plan to remove the area, the municipality may not amend the plan to again include the area in its annexation plan until the first anniversary of the date the municipality amended the plan to remove the area. If, during or after the 18 months after the month an area is included in the three-year annexation cycle, a municipality amends its annexation plan to remove the area, the municipality may not amend the plan to again include the area in its annexation plan until the second anniversary of the date the municipality amended the plan to remove the area.

(f) Before the 90th day after the date a municipality adopts or amends an annexation plan under this section, the municipality shall give written notice to:

(1) each property owner in the affected area, as indicated by the appraisal records furnished by the appraisal district for each county in which the affected area is located, that the area has been included in or removed from the municipality's annexation plan;

(2) each public entity, as defined by Section 43.053, or private entity that provides services in the area proposed for annexation; and

(3) [~~ANNEXATION HEARING REQUIREMENTS. (a) Before a municipality may institute annexation proceedings, the governing body of the municipality must conduct two public hearings at which persons interested in the annexation are given the opportunity to be heard. The hearings must be conducted on or after the 40th day but before the 20th day before the date of the institution of the proceedings.~~

[~~(b) At least one of the hearings must be held in the area proposed for annexation if more than 20 adult residents of the area file a written protest of the annexation with the secretary of the municipality within 10 days after the date of the publication of the notice required by this section. The protest must state the name, address, and age of each protester who signs.~~

[~~(c) The municipality must publish notice of the hearings in a newspaper of general circulation in the municipality and in the area proposed for annexation. The~~

~~notice for each hearing must be published at least once on or after the 20th day but before the 10th day before the date of the hearing. The municipality must give additional notice by certified mail to~~] each railroad company that serves the municipality and is on the municipality's tax roll if the company's right-of-way is in the area proposed for annexation.

(g) If an area is not removed from the municipality's annexation plan, the annexation of the area under the plan must be completed before the 31st day after the third anniversary of the date the area was included in the annexation plan. If the annexation is not completed within the period prescribed by this subsection, the municipality may not annex the area proposed for annexation before the fifth anniversary of the last day for completing an annexation under this subsection.

(h) This section does not apply to an area proposed for annexation if:

(1) the area contains fewer than 100 separate tracts of land on which one or more residential dwellings are located;

(2) the area will be annexed by vote or petition of the qualified voters or property owners as provided by Subchapter B;

(3) the area is included within the boundaries of a special district and the area is annexed at the request of the district;

(4) the area is the subject of an industrial district contract under Section 42.044;

(5) the area is located in a colonia, as that term is defined by Section 2306.581, Government Code;

(6) the area is annexed under Section 43.026, 43.027, 43.029, or 43.031; or

(7) the municipality determines that the annexation of the area is necessary to protect the area proposed for annexation or the municipality from:

(A) imminent destruction of property or injury to persons; or

(B) a condition or use that constitutes a public or private nuisance as defined by background principles of nuisance and property law of this state.

Sec. 43.053. INVENTORY OF SERVICES AND FACILITIES REQUIRED. (a) In this section, "public entity" includes a municipality, county, fire protection service provider, including a volunteer fire department, emergency medical services provider, including a volunteer emergency medical services provider, or a special district as that term is defined by Section 43.052.

(b) After adopting an annexation plan or amending an annexation plan to include additional areas under Section 43.052, a municipality shall compile a comprehensive inventory of services and facilities provided by public and private entities, directly or by contract, in each area proposed for annexation. The inventory of services and facilities must include all services and facilities the municipality is required to provide or maintain following the annexation.

(c) The municipality shall request, in the notice provided under Section 43.052(f), the information necessary to compile the inventory from each public or private entity that provides services or facilities in each area proposed for annexation. The public or private entity shall provide to the municipality the information held by the entity that is necessary to compile the inventory not later than the 90th day after the date the municipality requests the information unless the entity and the municipality agree to extend the period for providing the information. The information provided under this subsection must include the type of service provided, the method of service delivery, and all information prescribed by Subsections (e) and (f). If a service provider fails to provide the required information within the

90-day period, the municipality is not required to include the information in an inventory prepared under this section.

(d) The information required in the inventory shall be based on the services and facilities provided during the year preceding the date the municipality adopted the annexation plan or amended the annexation plan to include additional areas.

(e) For utility facilities, roads, drainage structures, and other infrastructure provided or maintained by public or private entities, the inventory must include:

(1) an engineer's report that describes the physical condition of all infrastructure elements in the area; and

(2) a summary of capital, operational, and maintenance expenditures for that infrastructure.

(f) For police, fire, and emergency medical services provided by public or private entities, the inventory must include for each service:

(1) the average dispatch and delivery time;

(2) a schedule of equipment, including vehicles;

(3) a staffing schedule that discloses the certification and training levels of personnel; and

(4) a summary of operating and capital expenditures.

(g) The municipality shall complete the inventory and make the inventory available for public inspection on or before the 60th day after the municipality receives the required information from the service providers under Subsection (c).

(h) The municipality may monitor the services provided in an area proposed for annexation and verify the inventory information provided by the service provider.

[~~PERIOD FOR COMPLETION OF ANNEXATION; EFFECTIVE DATE. (a) The annexation of an area must be completed within 90 days after the date the governing body institutes the annexation proceedings or those proceedings are void. Any period during which the municipality is restrained or enjoined by a court of competent jurisdiction from annexing the area is not included in computing the 90-day period.~~

[~~(b) Notwithstanding any provision of a municipal charter to the contrary, the governing body of a municipality with a population of 1.5 million or more may provide that an annexation take effect on any date within 90 days after the date of the adoption of the ordinance providing for the annexation.~~]

SECTION 5. Subchapter C, Chapter 43, Local Government Code, is amended by adding Section 43.0545 to read as follows:

Sec. 43.0545. ANNEXATION OF CERTAIN ADJACENT AREAS. (a) A municipality may not annex an area that is located in the extraterritorial jurisdiction of the municipality only because the area is contiguous to municipal territory that is less than 1,000 feet in width at its narrowest point.

(b) A municipality may not annex an area that is located in the extraterritorial jurisdiction of the municipality only because the area is contiguous to municipal territory that:

(1) was annexed before September 1, 1999; and

(2) was in the extraterritorial jurisdiction of the municipality at the time of annexation only because the territory was contiguous to municipal territory that was less than 1,000 feet in width at its narrowest point.

(c) Subsections (a) and (b) do not apply to an area:

(1) completely surrounded by incorporated territory of one or more municipalities;

(2) for which the owners of the area have requested annexation by the municipality;

(3) that is owned by the municipality; or

(4) that is the subject of an industrial district contract under Section 42.044.

(d) Subsection (b) does not apply if the minimum width of the narrow territory described by Subsection (b)(2), following subsequent annexation, is no longer less than 1,000 feet in width at its narrowest point.

(e) For purposes of this section, roads, highways, rivers, lakes, or other bodies of water are not included in computing the 1,000 foot distance.

SECTION 6. Section 43.056, Local Government Code, is amended to read as follows:

Sec. 43.056. PROVISION OF SERVICES TO ANNEXED AREA. (a) Before the first day of the 10th month after the month in which the inventory is prepared as provided by Section 43.053 [~~publication of the notice of the first hearing required under Section 43.052~~], [~~the governing body of~~] the municipality proposing the annexation shall complete [~~direct its planning department or other appropriate municipal department to prepare~~] a service plan that provides for the extension of full municipal services to the area to be annexed. The municipality shall provide the services by any of the methods by which it extends the services to any other area of the municipality.

(b) The service plan must include a program under which the municipality will provide full municipal services in the annexed area no later than 2-1/2 [~~4 1/2~~] years after the effective date of the annexation, in accordance with Subsection (e), unless that period is extended by an arbitration decision issued under this chapter or by agreement between the municipality and the party with which the municipality is required to negotiate for services under this subchapter [~~(d)~~]. However, under the program the municipality must provide the following services in the area on [~~within 60 days after~~] the effective date of the annexation of the area:

(1) police protection;

(2) fire protection;

(3) emergency medical services;

(4) solid waste collection;

(5) operation and [~~(4)~~] maintenance of water and wastewater facilities in the annexed area that are not within the service area of another water or wastewater utility;

(6) operation and [~~(5)~~] maintenance of roads and streets, including road and street lighting;

(7) operation and [~~(6)~~] maintenance of parks, playgrounds, and swimming pools; and

(8) operation and [~~(7)~~] maintenance of any other publicly owned facility, building, or service.

[~~(b-1) The service plan of a municipality with a population of 1.5 million or more must include a program under which the municipality will provide full municipal services in the annexed area no later than 4-1/2 years after the effective date of the annexation, in accordance with Subsection (d). However, under the program the municipality must:~~

[~~(1) provide the following services in the area on and after the effective date of the annexation of the area:~~

[~~(A) police protection; and~~

[~~(B) solid waste collection;~~

[~~(2) provide the following services in the area within 30 days after the effective date of the annexation of the area, if the services are provided through a contract between the municipality and a service provider:~~

[~~(A) emergency medical service; and~~

[~~(B) fire protection; and~~

[~~(3) provide the following services in the area within 60 days after the effective date of the annexation of the area:~~

[~~(A) maintenance of water and wastewater facilities in the annexed area that are not within the service area of another water or wastewater utility;~~

[~~(B) maintenance of roads and streets, including road and street lighting;~~

[~~(C) maintenance of parks, playgrounds, and swimming pools;~~

[~~(D) maintenance of any other publicly owned facility, building, or service; and~~

[~~(E) emergency medical service and fire protection, if the services are provided by municipal personnel and equipment.~~]

(c) For purposes of this section, "full municipal services" means services [~~funded in whole or in part by municipal taxation and~~] provided by the annexing municipality within its full-purpose boundaries, including water and central wastewater services and excluding gas or electrical service.

(d) A municipality with a population of 1.5 million or more may provide all or part of the municipal services required under the service plan by contracting with service providers. If the municipality owns a water and wastewater utility, the municipality shall, subject to this section, extend water and wastewater service to any annexed area not within the service area of another water or wastewater utility. If the municipality annexes territory included within the boundaries of a municipal utility district or a water control and improvement district, the municipality shall comply with applicable state law relating to annexation of territory within a municipal utility district or a water control and improvement district. The service plan shall summarize the service extension policies of the municipal water and wastewater utility.

(e) [~~(d)~~] The service plan must also include a program under which the municipality will initiate after the effective date of the annexation the acquisition or construction of capital improvements necessary for providing municipal services adequate to serve the area. The construction shall [~~begin within two years after the effective date of the annexation of the area and shall~~] be substantially completed within 2-1/2 [~~4-1/2~~] years after the effective [~~that~~] date of annexation unless that period is extended as provided by Subsection (b). The acquisition or construction of the facilities shall be accomplished by purchase, lease, or other contract or by the municipality succeeding to the powers, duties, assets, and obligations of a conservation and reclamation district as authorized or required by law. The construction of the facilities shall be accomplished in a continuous process and shall be completed as soon as reasonably possible, consistent with generally accepted local engineering and architectural standards and practices. However, the municipality does not violate this subsection if the construction process is interrupted for any reason by circumstances beyond the direct control of the municipality. The requirement that construction of capital improvements must be substantially completed within 2-1/2 [~~4-1/2~~] years does not apply to a development project or

proposed development project within an annexed area if the annexation of the area was initiated by petition or request of the owners of land in the annexed area and the municipality and the landowners have subsequently agreed in writing that the development project within that area, because of its size or projected manner of development by the developer, is not reasonably expected to be completed within that period.

(f) [~~(e)~~] A service plan may not:

(1) require the creation of another political subdivision;

(2) require a landowner in the area to fund the capital improvements necessary to provide municipal services in a manner inconsistent with Chapter 395 unless otherwise agreed to by the landowner; or

(3) provide [~~fewer~~] services [~~or lower levels of services~~] in the area in a manner that would have the effect of reducing by more than a negligible amount the level of fire and police protection and emergency medical services provided within the corporate boundaries of the municipality before annexation.

(g) If the annexed area had a lower level of services, infrastructure, and infrastructure maintenance than the level of services, infrastructure, and infrastructure maintenance provided within the corporate boundaries of the municipality before annexation, a service plan must provide the annexed area with a level of services, infrastructure, and infrastructure maintenance that is comparable to the level of services, infrastructure, and infrastructure maintenance available in other parts of the municipality with topography, land use, and population density similar to those reasonably contemplated or projected in the area. If the annexed area had a level of services, infrastructure, and infrastructure maintenance equal to the level of services, infrastructure, and infrastructure maintenance provided within the corporate boundaries of the municipality before annexation, a service plan must maintain that same level of services, infrastructure, and infrastructure maintenance. Except as provided by this subsection, if the annexed area had a level of services superior to the level of services provided within the corporate boundaries of the municipality before annexation, a service plan must provide the annexed area with a level of services that is comparable to the level of services available in other parts of the municipality with topography, land use, and population density similar to those reasonably contemplated or projected in the area. If the annexed area had a level of services for operating and maintaining the infrastructure of the area, including the facilities described by Subsections (b)(5)-(8), superior to the level of services provided within the corporate boundaries of the municipality before annexation, a service plan must provide for the operation and maintenance of the infrastructure of the annexed area at a level of services that is equal or superior to that level of services. In a municipality with a population of 1.6 million or more, if the annexed area had a level of services, infrastructure, and infrastructure maintenance superior to the level of services, infrastructure, and infrastructure maintenance provided within the corporate boundaries of the municipality before annexation, a service plan must provide the annexed area with a level of services, infrastructure, and infrastructure maintenance that is comparable to the level of services, infrastructure, and infrastructure maintenance that existed in the annexed area before annexation.

(h) A municipality with a population of 1.6 million or more may not impose a fee in the annexed area, over and above ad valorem taxes and fees imposed within the corporate boundaries of the municipality before annexation, to maintain the level of services that existed in the area before annexation. This subsection does not prohibit

the municipality from imposing a fee for a service in the area annexed if the same fee is imposed within the corporate boundaries of the municipality before annexation.

(i) [~~(f)~~] If only a part of the area to be annexed is actually annexed, the governing body shall direct the department to prepare a revised service plan for that part.

(j) [~~(g)~~] The proposed service plan must be made available for public inspection and explained to the inhabitants of the area at the public hearings held under Section 43.0561 [~~43.052~~]. The plan may be amended through negotiation at the hearings, but the provision of any service may not be deleted. On completion of the public hearings, the service plan shall be attached to the ordinance annexing the area and approved as part of the ordinance.

(k) [~~(h)~~] On approval by the governing body, the service plan is a contractual obligation that is not subject to amendment or repeal except that if the governing body determines at the public hearings required by this subsection that changed conditions or subsequent occurrences make the service plan unworkable or obsolete, the governing body may amend the service plan to conform to the changed conditions or subsequent occurrences. An amended service plan must provide for services that are comparable to or better than those established in the service plan before amendment. Before any amendment is adopted, the governing body must provide an opportunity for interested persons to be heard at public hearings called and held in the manner provided by Section 43.0561 [~~43.052~~].

(l) [~~(i)~~] A service plan is valid for 10 years. Renewal of the service plan is at the discretion of the municipality. A person residing or owning land in an annexed area may enforce a service plan by petitioning the municipality for a change in policy or procedures to ensure compliance with the service plan. If the municipality fails to take action with regard to the petition, the petitioner may request arbitration of the dispute under Section 43.0565. [~~applying for a writ of mandamus. If a court issues the writ, the municipality shall pay the person's costs and reasonable attorney's fees in bringing the action. A writ issued under this subsection must provide the municipality the option of disannexing the area within 30 days.~~]

(m) [~~(j) A municipality that annexes an area shall provide the area or cause the area to be provided with services in accordance with the service plan for the area.~~]

[~~(k)~~] This section does not require that a uniform level of full municipal services be provided to each area of the municipality if the governing body of the municipality determines that different characteristics of topography, land use, and population density are considered a sufficient basis for providing different levels of service. A person aggrieved by a determination made by a municipality under this subsection may request arbitration of the dispute under Section 43.0565. Nothing in this subsection modifies the requirement under Subsection (g) for a service plan to provide a level of services in an annexed area that is equal or superior to the level of services provided within the corporate boundaries of the municipality before annexation. To the extent of any conflict between this subsection and Subsection (g), Subsection (g) prevails.

SECTION 7. Subchapter C, Chapter 43, Local Government Code, is amended by renumbering Section 43.0561 as Section 43.0566 and Section 43.0565 as Section 43.0567 and adding Sections 43.0561, 43.0562, 43.0563, 43.0564, and 43.0565 to read as follows:

Sec. 43.0561. ANNEXATION HEARING REQUIREMENTS. (a) Before a municipality may institute annexation proceedings, the governing body of the municipality must conduct two public hearings at which persons interested in the

annexation are given the opportunity to be heard. The hearings must be conducted not later than the 90th day after the date the inventory is available for inspection.

(b) At least one of the hearings must be held in the area proposed for annexation if a suitable site is reasonably available and more than 20 adults who are permanent residents of the area file a written protest of the annexation with the secretary of the municipality within 10 days after the date of the publication of the notice required by this section. The protest must state the name, address, and age of each protester who signs. If a suitable site is not reasonably available in the area proposed for annexation, the hearing may be held outside the area proposed for annexation if the hearing is held in the nearest suitable public facility.

(c) The municipality must publish notice of the hearings in a newspaper of general circulation in the municipality and in the area proposed for annexation. The notice for each hearing must be published at least once on or after the 20th day but before the 10th day before the date of the hearing. The municipality must give additional notice by certified mail to:

(1) each public entity, as defined by Section 43.053, and utility service provider that provides services in the area proposed for annexation; and

(2) each railroad company that serves the municipality and is on the municipality's tax roll if the company's right-of-way is in the area proposed for annexation.

Sec. 43.0562. NEGOTIATIONS REQUIRED. (a) After holding the hearings as provided by Section 43.0561:

(1) if a municipality has a population of less than 1.6 million, the municipality and the property owners of the area proposed for annexation shall negotiate for the provision of services to the area after annexation or for the provision of services to the area in lieu of annexation under Section 43.0563; or

(2) if a municipality proposes to annex a special district as that term is defined by Section 43.052, the municipality and the governing body of the district shall negotiate for the provision of services to the area after annexation or for the provision of services to the area in lieu of annexation under Section 43.0751.

(b) For purposes of negotiations under Subsection (a)(1), the commissioners court of the county in which the area proposed for annexation is located shall select five representatives to negotiate with the municipality for the provision of services to the area after annexation. If the area proposed for annexation is located in more than one county, the commissioners court of the county in which the greatest number of residents reside shall select three representatives to negotiate with the municipality, and the commissioners courts of the remaining counties jointly shall select two representatives to negotiate with the municipality.

(c) For purposes of negotiations under Subsection (a)(2), if more than one special district is located in the area proposed for annexation, the governing boards of the districts may jointly select five representatives to negotiate with the municipality on behalf of all the affected districts.

Sec. 43.0563. CONTRACTS FOR PROVISION OF SERVICES IN LIEU OF ANNEXATION. (a) The governing body of a municipality with a population of less than 1.6 million may negotiate and enter into a written agreement with representatives designated under Section 43.0562(a)(1) for the provision of services and the funding of the services in the area. The agreement may also include an agreement related to permissible land uses and compliance with municipal ordinances.

(b) An agreement under this section is in lieu of annexation by the municipality of the area.

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

(1) any term allowed under Section 42.044 or 43.0751, regardless of whether the municipality or the area proposed for annexation would have been able to agree to the term under Section 42.044 or 43.0751; and

(2) any other term to which both parties agree to satisfactorily resolve any dispute between the parties, including the creation of any type of special district otherwise allowed by state law.

Sec. 43.0564. ARBITRATION REGARDING NEGOTIATIONS FOR SERVICES. (a) If the municipality and the representatives of the area proposed for annexation cannot reach an agreement for the provision of services under Section 43.0562 or if the municipality and the property owner representatives cannot reach an agreement for the provision of services in lieu of annexation under Section 43.0563, either party by majority decision of the party's representatives may request the appointment of an arbitrator to resolve the service plan issues in dispute. The request must be made in writing to the other party before the 60th day after the date the service plan is completed under Section 43.056. The municipality may not annex the area under another section of this chapter during the pendency of the arbitration proceeding or an appeal from the arbitrator's decision.

(b) The parties to the dispute may agree on the appointment of an arbitrator. If the parties cannot agree on the appointment of an arbitrator before the 11th business day after the date arbitration is requested, the mayor of the municipality shall immediately request a list of seven neutral arbitrators from the American Arbitration Association or the Federal Mediation and Conciliation Service or their successors in function. An arbitrator included in the list must be a resident of this state and may not be a resident of a county in which any part of the municipality or any part of the district proposed for annexation is located. The parties to the dispute may agree on the appointment of an arbitrator included in the list. If the parties cannot agree on the appointment of an arbitrator before the 11th business day after the date the list is provided to the parties, each party or the party's designee may alternately strike a name from the list. The remaining person on the list shall be appointed as the arbitrator. In this subsection, "business day" means a day other than a Saturday, Sunday, or state or national holiday.

(c) The arbitrator shall:

(1) set a hearing to be held not later than the 10th day after the date the arbitrator is appointed; and

(2) notify the parties to the arbitration in writing of the time and place of the hearing not later than the eighth day before the date of the hearing.

(d) The authority of the arbitrator is limited to issuing a decision relating only to the service plan issues in dispute.

(e) The arbitrator may:

(1) receive in evidence any documentary evidence or other information the arbitrator considers relevant;

(2) administer oaths; and

(3) issue subpoenas to require:

(A) the attendance and testimony of witnesses; and

(B) the production of books, records, and other evidence relevant to an issue presented to the arbitrator for determination.

(f) Unless the parties to the dispute agree otherwise the arbitrator shall complete the hearing within two consecutive days. The arbitrator shall permit each party one day to present evidence and other information. The arbitrator, for good cause shown, may schedule an additional hearing to be held not later than the seventh day after the date of the first hearing. Unless otherwise agreed to by the parties, the arbitrator must issue a decision in writing and deliver a copy of the decision to the parties not later than the 14th day after the date of the final hearing.

(g) Either party may appeal any provision of an arbitrator's decision that exceeds the authority granted under Subsection (d) to a district court in a county in which the area proposed for annexation is located.

(h) If the municipality does not agree with the terms of the arbitrator's decision, the municipality may not annex the area proposed for annexation before the fifth anniversary of the date of the arbitrator's decision.

(i) Except as provided by this subsection, the municipality shall pay the cost of arbitration. If the arbitrator finds that the request for arbitration submitted by the representatives of the area proposed for annexation was groundless or requested in bad faith or for the purposes of harassment, the arbitrator may require the area proposed for annexation to pay all or part of the cost of arbitration.

Sec. 43.0565. ARBITRATION REGARDING ENFORCEMENT OF SERVICE PLAN. (a) A person who requests arbitration as provided by Section 43.056(l) must request the appointment of an arbitrator in writing to the municipality.

(b) Sections 43.0564(b), (c), and (e) apply to appointment of an arbitrator and the conduct of an arbitration proceeding under this section.

(c) In an arbitration proceeding under this section, the municipality has the burden of proving that the municipality is in compliance with the service plan requirements.

(d) If the arbitrator finds that the municipality has not complied with the service plan requirements:

(1) the municipality may disannex the area before the 31st day after the date the municipality receives a copy of the arbitrator's decision; and

(2) the arbitrator may:

(A) require the municipality to comply with the service plan in question before a reasonable date specified by the arbitrator if the municipality does not disannex the area;

(B) require the municipality to refund to the landowners of the annexed area money collected by the municipality from those landowners for services to the area that were not provided; and

(C) require the municipality to pay the costs of arbitration, including the reasonable attorney's fees and arbitration costs of the person requesting arbitration.

(e) If the arbitrator finds that the municipality has complied with the service plan requirements, the arbitrator may require the person requesting arbitration to pay all or part of the cost of arbitration, including the reasonable attorney's fees of the municipality.

Sec. 43.0566 [~~43.0561~~]. RELEASE OF EXTRATERRITORIAL JURISDICTION BY GENERAL LAW MUNICIPALITY OVER CERTAIN TRACTS OF LAND. (a) This section applies only to a tract of property that is:

(1) 40 or more acres in size;

(2) located entirely in a county with a population of more than 260,000; and

(3) located in the extraterritorial jurisdiction of a general law municipality with a population of more than 1,000 but less than 2,500 that provides water but not sewer services.

(b) The owner of a tract of land to which this section applies that is adjacent to the corporate limits of another municipality may petition the governing body of that other municipality for annexation. On receipt of a petition, the municipality may annex the area if the municipality agrees to a service plan that provides both water and sewer services to the tract not later than 3 1/2 years after the date of the annexation. On annexation, the area is released from the extraterritorial jurisdiction of the municipality described by Subsection (a)(3) and becomes a part of the municipality agreeing to provide water and sewer services.

(c) This section expires March 31, 1996, unless there is litigation pending at that time involving the validity of the annexation of a tract of land to which this section applies. If litigation is pending, this section remains in effect until a court enters a final judgment in the case.

Sec. 43.0567 [~~43.0565~~]. PROVISION OF WATER OR SEWER SERVICE IN POPULOUS MUNICIPALITY. (a) The requirements of this section are in addition to those prescribed by Section 43.056.

(b) A municipality with a population of more than 1.6 [~~1.5~~] million that includes within its boundaries annexed areas without water service, sewer service, or both:

(1) shall develop a service plan that:

(A) must identify developed tracts in annexed areas of the municipality that do not have water service, sewer service, or both and must provide a procedure for providing water service, sewer service, or both to those developed tracts;

(B) must establish a timetable for providing service based on a priority system that considers potential health hazards, population density, the number of existing buildings, the reasonable cost of providing service, and the desires of the residents;

(C) must include a capital improvements plan committing the necessary financing;

(D) may relieve the municipality from an obligation to provide water service, sewer service, or both in an area described in the service plan if a majority of the households in the area sign a petition stating they do not want to receive the services; and

(E) may require property owners to connect to service lines constructed to serve their area;

(2) shall provide water service, sewer service, or both to at least 75 percent of the residential buildings in annexed areas of the municipality that did not have water service, sewer service, or both on September 1, 1991;

(3) shall provide water service to each area annexed before January 1, 1993, if the area or subdivision as described in the service plan contains at least 25 residences without water service, unless a majority of the households in the area state in a petition that they do not want municipal water service; and

(4) is subject to the penalty prescribed by Section 5.235(n)(6), Water Code, for the failure to provide services.

SECTION 8. Chapter 43, Local Government Code, is amended by adding Subchapter C-1 to read as follows:

SUBCHAPTER C-1. ANNEXATION PROCEDURE
FOR AREAS EXEMPTED FROM MUNICIPAL ANNEXATION PLAN

Sec. 43.061. APPLICABILITY. This subchapter applies to an area proposed for annexation that is not required to be included in a municipal annexation plan under Section 43.052.

Sec. 43.062. PROCEDURES APPLICABLE. Sections 43.051, 43.054, 43.0545, 43.055, 43.0567, and 43.057 apply to the annexation of an area to which this subchapter applies.

Sec. 43.063. ANNEXATION HEARING REQUIREMENTS. (a) Before a municipality may institute annexation proceedings, the governing body of the municipality must conduct two public hearings at which persons interested in the annexation are given the opportunity to be heard. The hearings must be conducted on or after the 40th day but before the 20th day before the date of the institution of the proceedings.

(b) At least one of the hearings must be held in the area proposed for annexation if a suitable site is reasonably available and more than 10 percent of the adults who are permanent residents of the area file a written protest of the annexation with the secretary of the municipality within 10 days after the date of the publication of the notice required by this section. The protest must state the name, address, and age of each protester who signs.

(c) The municipality must publish notice of the hearings in a newspaper of general circulation in the municipality and in the area proposed for annexation. The notice for each hearing must be published at least once on or after the 20th day but before the 10th day before the date of the hearing. The municipality must give additional notice by certified mail to each railroad company that serves the municipality and is on the municipality's tax roll if the company's right-of-way is in the area proposed for annexation.

Sec. 43.064. PERIOD FOR COMPLETION OF ANNEXATION; EFFECTIVE DATE. (a) The annexation of an area must be completed within 90 days after the date the governing body institutes the annexation proceedings or those proceedings are void. Any period during which the municipality is restrained or enjoined by a court from annexing the area is not included in computing the 90-day period.

(b) Notwithstanding any provision of a municipal charter to the contrary, the governing body of a municipality with a population of 1.6 million or more may provide that an annexation take effect on any date within 90 days after the date of the adoption of the ordinance providing for the annexation.

Sec. 43.065. PROVISION OF SERVICES TO ANNEXED AREA. (a) Before the publication of the notice of the first hearing required under Section 43.063, the governing body of the municipality proposing the annexation shall direct its planning department or other appropriate municipal department to prepare a service plan that provides for the extension of full municipal services to the area to be annexed. The municipality shall provide the services by any of the methods by which it extends the services to any other area of the municipality.

(b) Sections 43.056(b)-(m) apply to the annexation of an area to which this subchapter applies.

SECTION 9. Section 43.0751, Local Government Code, is amended by amending Subsections (b) and (k) and adding Subsections (o) and (p) to read as follows:

(b) The governing bodies of a municipality and a district may [~~shall~~] negotiate and [~~may~~] enter into a written strategic partnership agreement for the district by mutual consent. The governing body of a municipality, on written request from a district included in the municipality's annexation plan under Section 43.052, shall negotiate and enter into a written strategic partnership agreement with the district [~~bodies of the municipality and the district shall evidence their intention to negotiate such an agreement by resolution, each of which resolutions shall specify an expiration date if the other governing body fails to adopt a resolution under this section on or before the specified date. The governing body of a municipality that has evidenced its intention by unexpired resolution to enter into negotiations with a district for an agreement under this section may not initiate proceedings to annex the district under any other section of this code prior to the expiration of two years after the adoption date of the resolution unless the municipality has previously instituted annexation proceedings in granting consent to the creation of the district prior to January 1, 1995~~].

(k) A municipality that has annexed all or part of a district for limited purposes under this section may impose a retail sales tax within the boundaries of the part of the district that is annexed for limited purposes.

(o) If a municipality required to negotiate with a district under this section and the requesting district fail to agree on the terms of a strategic partnership agreement, either party may seek binding arbitration of the issues relating to the agreement in dispute under Section 43.0752.

(p) An agreement under this section:

(1) may not require the district to provide revenue to the municipality solely for the purpose of obtaining an agreement with the municipality to forgo annexation of the district; and

(2) must provide benefits to each party, including revenue, services, and regulatory benefits, that must be reasonable and equitable with regard to the benefits provided by the other party.

SECTION 10. Subchapter D, Chapter 43, Local Government Code, is amended by adding Section 43.0752 to read as follows:

Sec. 43.0752. ARBITRATION OF STRATEGIC PARTNERSHIP AGREEMENT. (a) If the municipality and the district cannot reach an agreement on the terms of a strategic partnership agreement under Section 43.0751, either party may request the appointment of an arbitrator to resolve the issues in dispute. The request must be made in writing to the other party before the 60th day after the date the district submits its written request for negotiations under Section 43.0751(b). The municipality may not annex the district under another section of this chapter during the pendency of the arbitration proceeding or an appeal from the arbitrator's decision.

(b) Sections 43.0564(b), (c), (e), (f), (g), and (h) apply to appointment of an arbitrator and the conduct of an arbitration proceeding under this section.

(c) The authority of the arbitrator is limited to determining whether the offer of a party complies with Section 43.0751(p).

(d) If the arbitrator finds that an offer complies with Section 43.0751(p), the arbitrator may issue a decision that incorporates the offer as part of the strategic partnership agreement.

(e) The municipality and the district shall equally pay the costs of arbitration.

SECTION 11. Section 43.121(a), Local Government Code, is amended to read as follows:

(a) The governing body of a home-rule municipality with more than 225,000 inhabitants[~~, if authorized under its home-rule charter,~~] by ordinance may annex an area for the limited purposes of applying its planning, zoning, health, and safety ordinances in the area.

SECTION 12. Section 43.141(c), Local Government Code, is amended to read as follows:

(c) If the area is disannexed under this section, it may not be annexed again within 10 [~~five~~] years after the date of the disannexation. [~~If it is reannexed within seven years after the date of the disannexation, a service plan for the area must be implemented not later than one year after the date of the reannexation.~~]

SECTION 13. Subchapter G, Chapter 43, Local Government Code, is amended by adding Section 43.148 to read as follows:

Sec. 43.148. REFUND OF TAXES AND FEES. (a) If an area is disannexed, the municipality disannexing the area shall refund to the landowners of the area the amount of money collected by the municipality in property taxes and fees from those landowners during the period that the area was a part of the municipality less the amount of money that the municipality spent for the direct benefit of the area during that period.

(b) A municipality shall proportionately refund the amount under Subsection (a) to the landowners according to a method to be developed by the municipality that identifies each landowner's approximate pro rata payment of the taxes and fees being refunded.

(c) A municipality required to refund money under this section shall refund the money to current landowners in the area not later than the 180th day after the date the area is disannexed. Money that is not refunded within the period prescribed by this subsection accrues interest at the rate of:

(1) six percent each year after the 180th day and until the 210th day after the date the area is disannexed; and

(2) one percent each month after the 210th day after the date the area is disannexed.

SECTION 14. Subchapter Z, Chapter 43, Local Government Code, is amended by adding Section 43.905 to read as follows:

Sec. 43.905. EFFECT OF ANNEXATION ON OPERATION OF SCHOOL DISTRICT. (a) A municipality that proposes to annex an area shall provide written notice of the proposed annexation to each public school district located in the area proposed for annexation within the time period prescribed for publishing the notice of the first hearing under Section 43.0561 or 43.063, as applicable.

(b) A notice to a public school district shall contain a description of:

(1) the area within the district proposed for annexation;

(2) any financial impact on the district resulting from the annexation, including any changes in utility costs; and

(3) any proposal the municipality has to abate, reduce, or limit any financial impact on the district.

(c) The municipality may not proceed with the annexation unless the municipality provides the required notice.

(d) A municipality that has annexed any portion of an area after December 1, 1996, and before September 1, 1999, in which a school district has a facility shall grant a variance from the municipality's building code for that facility if the facility does not comply with the code.

(e) A municipality that, as a result of the annexation, provides utility services to a school district facility may charge the district for utility services at:

(1) the same rate that the district was paying before the annexation; or

(2) a lower municipal rate.

(f) A rate set under Subsection (e) is effective until the first day of the school district's fiscal year that begins after the 90th day after the effective date of the annexation.

SECTION 15. Subchapter A, Chapter 5, Property Code, is amended by adding Section 5.012 to read as follows:

Sec. 5.012. SELLER'S DISCLOSURE REGARDING POTENTIAL ANNEXATION. (a) A person who sells an interest in real property in this state shall give to the purchaser of the property a written notice that reads substantially similar to the following:

NOTICE REGARDING POSSIBLE ANNEXATION

If the property that is the subject of this contract is located outside the limits of a municipality, the property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the property for further information.

(b) The seller shall deliver the notice to the purchaser before the date the executory contract binds the purchaser to purchase the property. The notice may be given separately, as part of the contract during negotiations, or as part of any other notice the seller delivers to the purchaser.

(c) This section does not apply to a transfer:

(1) under a court order or foreclosure sale;

(2) by a trustee in bankruptcy;

(3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;

(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;

(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(6) from one co-owner to another co-owner of an undivided interest in the real property;

(7) to a spouse or a person in the lineal line of consanguinity of the seller;

(8) to or from a governmental entity;

(9) of only a mineral interest, leasehold interest, or security interest; or

(10) of real property that is located wholly within a municipality's corporate boundaries.

(d) If the notice is delivered as provided by this section, the seller has no duty to provide additional information regarding the possible annexation of the property by a municipality.

(e) If an executory contract is entered into without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason within the earlier of:

(1) seven days after the date the purchaser receives the notice; or

(2) the date the transfer occurs.

SECTION 16. (a) This Act takes effect September 1, 1999, except that Section 15 of this Act takes effect January 1, 2000.

(b) Each municipality shall adopt an annexation plan as required by Section 43.052, Local Government Code, as amended by this Act, on or before December 31, 1999, that becomes effective December 31, 1999.

(c) Except as provided by Subsection (d) of this section, the changes in law made by Sections 2 through 7 and 9 through 13 of this Act apply only to an annexation included in a municipality's annexation plan prepared under Section 43.052, Local Government Code, as amended by this Act. Except as provided by Subsection (d) of this section, a municipality may continue to annex any area during the period beginning December 31, 1999, and ending December 31, 2002, under Chapter 43, Local Government Code, as it existed immediately before September 1, 1999, if the area is not included in the annexation plan, and the former law is continued in effect for that purpose.

(d) The changes in law made by this Act in Sections 43.002, 43.0545, 43.056(b), (c), (e), (f), (g), (l), and (m), 43.121(a), 43.141(c), 43.148, and 43.905, Local Government Code, as added or amended by this Act, apply to the annexation of an area that is not included in the municipality's annexation plan during the period beginning December 31, 1999, and ending December 31, 2002, if the first hearing notice required by Section 43.052, Local Government Code, as it existed immediately before September 1, 1999, is published on or after that date.

(e) The changes in law made by this Act in Sections 43.002, 43.0545, 43.056(b), (c), (e), (f), (g), (l), and (m), 43.121(a), 43.141(c), 43.148, and 43.905, Local Government Code, as added or amended by this Act, apply only to the annexation of an area that is not required to be included in a municipal annexation plan under Section 43.052, Local Government Code, as amended by this Act, if the first hearing notice required by Section 43.063, Local Government Code, as added by this Act, is published on or after September 1, 1999.

(f) The change in law made by Section 1 of this Act applies only to:

(1) an annexation included in a municipality's annexation plan prepared under Section 43.052, Local Government Code, as amended by this Act; and

(2) an annexation of an area that is not included in the municipality's annexation plan during the period beginning December 31, 1999, and ending December 31, 2002, if the first hearing notice required by Section 43.052, Local Government Code, as it existed immediately before September 1, 1999, is published on or after that date.

(g) The change in law made by Section 15 of this Act applies only to a transfer of property that occurs on or after January 1, 2000. For purposes of this section, a transfer of property occurs before January 1, 2000, if the executory contract binding the purchaser to purchase the property is executed before that date. Property transferred before January 1, 2000, is covered by the law in effect when the property was transferred, and the former law is continued in effect for that purpose.

SECTION 17. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend **CSSB 89** in SECTION 1 of the bill by striking Sections 42.0225(b) and (c), Local Government Code (Committee Printing page 1, lines 12-19), and substituting the following:

(b) Notwithstanding Section 42.021, the annexation of an area described by Subsection (a) does not expand the extraterritorial jurisdiction of the municipality.

Floor Amendment No. 2

Amend **CSSB 89** as follows:

(1) In SECTION 4 of the bill, strike Section 43.052(d)(1), Local Government Code (Committee Printing page 4, lines 4-6), and substitute the following:

(1) reduce the tax rate applicable to the area if the amount that would remain in the debt service fund after the reduction and after subtracting the amount due for debt service in the following year is less than 25 percent of the debt service requirements for the following year;

(2) In SECTION 4 of the bill, strike Section 43.052(h), Local Government Code (Committee Printing page 6, line 13, through page 7, line 9), and substitute the following:

(h) This section does not apply to an area proposed for annexation if:

(1) the area contains fewer than 100 separate tracts of land on which one or more residential dwellings are located on each tract;

(2) the area will be annexed by petition of more than 50 percent of the real property owners in the area proposed for annexation or by vote or petition of the qualified voters or real property owners as provided by Subchapter B;

(3) the area is included within the boundaries of a special district and the governing board of the district requested annexation of the area during the one-year period before the date the municipality adopts an ordinance to annex the area;

(4) the area is the subject of an industrial district contract under Section 42.044 or a strategic partnership agreement under Section 43.0751;

(5) the area is located in a colonia, as that term is defined by Section 2306.581, Government Code;

(6) the area is annexed under Section 43.026, 43.027, 43.029, or 43.031;

(7) the area is located completely within the boundaries of a closed military installation; or

(8) the municipality determines that the annexation of the area is necessary to protect the area proposed for annexation or the municipality from:

(A) imminent destruction of property or injury to persons; or

(B) a condition or use that constitutes a public or private nuisance as defined by background principles of nuisance and property law of this state.

(i) A municipality may not circumvent the requirements of this section by proposing to separately annex two or more areas described by Subsection (h)(1) if no reason exists under generally accepted municipal planning principles and practices for separately annexing the areas. If a municipality proposes to separately annex areas in violation of this section, a person residing or owning land in the area may petition the municipality to include the area in the municipality's annexation plan. If the municipality fails to take action on the petition, the petitioner may request arbitration of the dispute. The petitioner must request the appointment of an arbitrator in writing to the municipality. Sections 43.0564(b), (c), and (e) apply to the appointment of an arbitrator and the conduct of an arbitration proceeding under this subsection. Except

as provided by this subsection, the municipality shall pay the cost of arbitration. If the arbitrator finds that the petitioner's request for arbitration was groundless or requested in bad faith or for the purposes of harassment, the arbitrator shall require the petitioner to pay the costs of arbitration.

(3) In SECTION 6 of the bill, strike Section 43.056(b), Local Government Code (Committee Printing page 11, line 11, through page 12, line 6), and substitute the following:

(b) The service plan must include a program under which the municipality will provide full municipal services in the annexed area no later than 2-1/2 [~~4-1/2~~] years after the effective date of the annexation, in accordance with Subsection (e), unless that period is extended by an arbitration decision issued under this chapter or by agreement between the municipality and the party with which the municipality is required to negotiate for services under this subchapter [~~(d)~~]. However, under the program if the municipality provides any of the following services within the corporate boundaries of the municipality before annexation, the municipality must provide those [~~the following~~] services in the area proposed for annexation on [~~within 60 days after~~] the effective date of the annexation of the area:

(1) police protection;

(2) fire protection;

(3) emergency medical services;

(4) solid waste collection, except as provided by Subsection (o);

(5) operation and [~~(4)~~] maintenance of water and wastewater facilities in the annexed area that are not within the service area of another water or wastewater utility;

(6) operation and [~~(5)~~] maintenance of roads and streets, including road and street lighting;

(7) operation and [~~(6)~~] maintenance of parks, playgrounds, and swimming pools; and

(8) operation and [~~(7)~~] maintenance of any other publicly owned facility, building, or service.

(4) In SECTION 6 of the bill, strike Section 43.056(c), Local Government Code (Committee Printing page 13, lines 10-14), and substitute the following:

(c) For purposes of this section, "full municipal services" means services [~~funded in whole or in part by municipal taxation and~~] provided by the annexing municipality within its full-purpose boundaries , including water and wastewater services and excluding gas or electrical service.

(5) In SECTION 6 of the bill, strike Sections 43.056(l) and (m), Local Government Code (Committee Printing page 18, line 4, through page 19, line 5), and substitute the following:

(l) [~~(i)~~] A service plan is valid for 10 years. Renewal of the service plan is at the discretion of the municipality. A person residing or owning land in an annexed area in a municipality with a population of 1.6 million or more may enforce a service plan by petitioning the municipality for a change in policy or procedures to ensure compliance with the service plan. If the municipality fails to take action with regard to the petition, the petitioner may request arbitration of the dispute under Section 43.0565. A person residing or owning land in an annexed area in a municipality with a population of less than 1.6 million may enforce a service plan by applying for a writ of mandamus not later than the second anniversary of the date the person knew or should have known that the municipality was not complying with the

service plan. If a writ of mandamus is applied for, the municipality has the burden of proving that the services have been provided in accordance with the service plan in question. If a court issues a [~~the~~] writ under this subsection, the court:

(1) [~~municipality shall pay the person's costs and reasonable attorney's fees in bringing the action. A writ issued under this subsection~~] must provide the municipality the option of disannexing the area within a reasonable period specified by the court;

(2) may require the municipality to comply with the service plan in question before a reasonable date specified by the court if the municipality does not disannex the area within the period prescribed by the court under Subdivision (1);

(3) may require the municipality to refund to the landowners of the annexed area money collected by the municipality from those landowners for services to the area that were not provided;

(4) may assess a civil penalty against the municipality, to be paid to the state in an amount as justice may require, for the period in which the municipality is not in compliance with the service plan;

(5) may require the parties to participate in mediation; and

(6) may require the municipality to pay the person's costs and reasonable attorney's fees in bringing the action for the writ [~~30 days~~].

(m) [~~(j) A municipality that annexes an area shall provide the area or cause the area to be provided with services in accordance with the service plan for the area.~~

[~~(k)~~] This section does not require that a uniform level of full municipal services be provided to each area of the municipality if different characteristics of topography, land use, and population density constitute [~~are considered~~] a sufficient basis for providing different levels of service. Any dispute regarding the level of services provided under this subsection are resolved in the same manner provided by Subsection (l). Nothing in this subsection modifies the requirement under Subsection (g) for a service plan to provide a level of services in an annexed area that is equal or superior to the level of services provided within the corporate boundaries of the municipality before annexation. To the extent of any conflict between this subsection and Subsection (g), Subsection (g) prevails.

(6) In SECTION 6 of the bill, in Section 43.056, Local Government Code, add Subsections (n) and (o) (Committee Printing page 19, between lines 5 and 6) to read as follows:

(n) Before the third anniversary after the date an area is included within the corporate boundaries of a municipality by annexation, the municipality may not:

(1) prohibit the collection of solid waste in the area by a privately owned solid waste management service provider; or

(2) impose a fee for solid waste management services on a person who continues to use the services of a privately owned solid waste management service provider.

(o) A municipality is not required to provide solid waste collection services under Subsection (b) to a person who continues to use the services of a privately owned solid waste management service provider as provided by Subsection (n).

(7) In SECTION 7 of the bill, strike Section 43.0563(a), Local Government Code (Committee Printing page 21, lines 16-22), and substitute the following:

(a) The governing body of a municipality with a population of less than 1.6 million may negotiate and enter into a written agreement with representatives designated under Section 43.0562(a)(1) for the provision of services and the funding

of the services in the area. Notwithstanding other law, the agreement may also include an agreement related to permissible land uses and compliance with municipal ordinances.

(8) In SECTION 8 of the bill, strike Section 43.062, Local Government Code (Committee Printing page 28, lines 20-22), and substitute the following:

Sec. 43.062. PROCEDURES APPLICABLE. (a) Sections 43.051, 43.054, 43.0545, 43.055, 43.0565, 43.0567, and 43.057 apply to the annexation of an area to which this subchapter applies.

(b) Sections 43.0562, 43.0563, and 43.0564 apply to the annexation of an area described by Section 43.052(h)(1). For purposes of this subsection, a reference in 43.0562 to Section 43.0561 means Section 43.063.

(9) In SECTION 8 of the bill, in Section 43.065(b), Local Government Code (Committee Printing page 30, line 12), strike "(m)" and substitute "(o)".

(10) In SECTION 16 of the bill, strike Subsections (d) and (e) (Committee Printing page 38, lines 4-21) and substitute the following:

(d) The changes in law made by this Act in Sections 43.002, 43.0545, 43.056(b), (c), (e), (f), (g), (l), (m), (n), and (o), 43.0562, 43.0563, 43.0564, 43.0565, 43.0751, 43.0752, 43.121(a), 43.141(c), 43.148, and 43.905, Local Government Code, as added or amended by this Act, apply to the annexation of an area that is not included in the municipality's annexation plan during the period beginning December 31, 1999, and ending December 31, 2002, if the first public hearing required as part of the annexation procedure is conducted on or after September 1, 1999. For purposes of applying Section 43.0562, Local Government Code, as provided by this subsection, a reference to Section 43.0561, Local Government Code, means Section 43.052, Local Government Code, as it existed immediately before September 1, 1999. For purposes of applying Section 43.0751, Local Government Code, as provided by this subsection, a reference to a district included in a municipality's annexation plan means a district for which a service plan has been prepared under Section 43.056, Local Government Code.

(e) The changes in law made by this Act in Sections 43.002, 43.0545, 43.056(b), (c), (e), (f), (g), (l), (m), (n), and (o), 43.0565, 43.121(a), 43.141(c), 43.148, and 43.905, Local Government Code, as added or amended by this Act, apply to the annexation of an area that is not required to be included in a municipal annexation plan under Section 43.052, Local Government Code, as amended by this Act, if the first hearing notice required by Section 43.063, Local Government Code, as added by this Act, is published on or after September 1, 1999.

Floor Amendment No. 5

Amend the Bosse amendment of **CSSB 89** by striking Section 43.052(h), Local Government Code (Bosse Amendment page 1, line 13, through page 2, line 18) and substituting the following:

(h) This section does not apply to an area proposed for annexation if:

(1) the area will be annexed by petition of more than 50 percent of the real property owners in the area proposed for annexation or by vote or petition of the qualified voters or property owners as provided by Subchapter B;

(2) the area is included within the boundaries of a special district and the governing board of the district requested annexation of the area during the one-year period before the date the municipality adopts an ordinance to annex the area;

(3) the area is the subject of an industrial district contract under Section 42.044 or a strategic partnership agreement under Section 43.0751;

(4) the area is located in a colonia, as that term is defined by Section 2306.581, Government Code;

(5) the area is annexed under Section 43.026, 43.027, 43.029, or 43.031;

(6) the area is located completely within the boundaries of a closed military installation; or

(7) the municipality determines that the annexation of the area is necessary to protect the area proposed for annexation or the municipality from:

(A) imminent destruction of property or injury to persons; or

(B) a condition or use that constitutes a public or private nuisance as defined by background principles of nuisance and property law of this state.

Floor Amendment No. 6

Amend **CSSB 89** on page 35 by striking SECTION 15 of the bill.

Floor Amendment No. 7

Amend **CSSB 89** in SECTION 4 of the bill, in Section 43.052, Local Government Code (Committee Printing, page 7, between lines 9 and 10), by adding Subsection (i) to read as follows:

(i) A municipality shall post its annexation plan and any amendments to the plan on the municipality's Internet website if the municipality has an Internet website.

Floor Amendment No. 8

Amend SECTION 5 of **CSSB 89** in 43.0545(e) by adding the following language after the word "distance": "unless the area is being annexed by a municipality of 350,000 or less that borders the Gulf of Mexico and the area being annexed includes land in addition to a road, highway, river, lake or other body of water."

Floor Amendment No. 9

Amend **CSSB 89** as follows:

(1) In SECTION 7 of the bill, strike added Section 43.0561(c), Local Government Code (Committee Printing, page 19, line 27 through page 20, line 11), and substitute the following:

(c) The municipality must post notice of the hearings on the municipality's Internet website if the municipality has an Internet website and publish notice of the hearings in a newspaper of general circulation in the municipality and in the area proposed for annexation. The notice for each hearing must be posted and published at least once on or after the 20th day but before the 10th day before the date of the hearing. The municipality must give additional notice by certified mail to:

(1) each public entity, as defined by Section 43.053, and utility service provider that provides services in the area proposed for annexation; and

(2) each railroad company that serves the municipality and is on the municipality's tax roll if the company's right-of-way is in the area proposed for annexation.

(2) In SECTION 8 of the bill, strike added Section 43.063(c), Local Government Code (Committee Printing, page 29, lines 10-18), and substitute the following:

(c) The municipality must post notice of the hearings on the municipality's Internet website if the municipality has an Internet website and publish notice of the hearings in a newspaper of general circulation in the municipality and in the area proposed for annexation. The notice for each hearing must be posted and published at least once on or after the 20th day but before the 10th day before the date of the hearing. The municipality must give additional notice by certified mail to each railroad company that serves the municipality and is on the municipality's tax roll if the company's right-of-way is in the area proposed for annexation.

Floor Amendment No. 11

Amend **CSSB 89** as follows:

(1) In SECTION 13 of the bill, in the recital to that section (Committee printing, page 33, line 13), strike "Section 43.148" and substitute "Sections 43.148 and 43.149".

(2) In SECTION 13 of the bill (Committee printing, page 34, between lines 6 and 7), insert the following:

Sec. 43.149. JUDICIAL INVALIDATION OF ANNEXATION. (a) If an annexation by a municipality is invalidated by a final judgment of a court, the annexing municipality shall:

(1) immediately disannex the area;

(2) refund to the landowners in the area annexed an amount equal to the amount of property taxes and fees collected by the municipality from the landowners during the period the area was included within the corporate boundaries of the municipality less any amount spent by the municipality for the direct benefit of the area during that period; and

(3) at the municipality's full cost, reestablish and refund all funds, contracts, and accounts to any special district that existed at the time the area was annexed and was abolished by the municipality as a result of the annexation.

(b) For the purposes of Subsection (a)(2), the municipality shall refund amounts to the landowners according to a method adopted by the municipality for determining the pro rata share of the refund of property taxes and fees to which each landowner is entitled.

(c) The municipality shall refund amounts owed under Subsection (a)(2) to current landowners not later than the 180th day after the date of the final judgment of the court invalidating the annexation. If the municipality fails to refund the amounts within that period, the municipality is subject to a civil penalty in an amount equal to:

(1) six percent of the amount owed for each day the amount is unpaid after the period prescribed by this subsection; and

(2) one percent of the amount owed for each month or portion of a month the amount is unpaid after the period prescribed by this subsection.

(d) An area disannexed under this section may not be annexed by the municipality before the 10th anniversary of the date of the final judgment of the court invalidating the annexation.

(3) In SECTION 16 of the bill, in Subsection (d) (Committee printing, page 38, line 6), between "43.148," and "and", insert "43.149,".

(4) In SECTION 16 of the bill, in Subsection (e) (Committee printing, page 38, line 15), between "43.148," and "and", insert "43.149,".

(5) In SECTION 16 of the bill (Committee printing, page 39, between lines 13 and 14), add Subsection (h) to read as follows:

(h) The change in law made by Section 43.149, Local Government Code, as added by this Act, applies to an annexation that occurs before, on, or after the effective date of this Act.

Floor Amendment No. 13

Amend the Keel amendment to **CSSB 89** on page 2, lines 3 and 4 of the amendment by striking "owed for each day the amount is".

Floor Amendment No. 14

Amend **CSSB 89** as follows:

(1) In SECTION 13 of the bill, in the recital to that section (House Committee Printing, page 33, line 13), strike "Section 43.148" and substitute "Sections 43.148 and 43.149".

(2) In SECTION 13 of the bill, add Section 43.149, Local Government Code (House Committee Printing, page 34, between lines 6 and 7), to read as follows:

Sec. 43.149. DISANNEXATION OF CERTAIN AREAS ANNEXED BY POPULOUS MUNICIPALITY. (a) This section applies only to an area that:

(1) is annexed by a municipality with a population of 1.6 million or more;

(2) has a population of 20,000 or more at the time of the annexation; and

(3) has not approved the annexation by a majority vote in an election held for that purpose.

(b) The county in which the area is located shall hold an election on the disannexation of the area from the municipality if the county clerk receives a petition requesting a disannexation election signed by at least 10 percent of the registered voters who reside in the area. The county clerk shall determine the validity of the petition under Chapter 277, Election Code, not later than the 30th day after the date the petition is received.

(c) If the county clerk determines that a petition filed under Subsection (b) is valid or if the county clerk fails to make a determination within the period prescribed by Subsection (b), the county judge shall order the election to be held on the first uniform election date that occurs after the 45th day after the earlier of the date:

(1) the county clerk determines the petition is valid; or

(2) the period for making a determination under Subsection (b) expires.

(d) Only a registered voter residing in the area may vote in the election. The municipality that annexed the area shall pay the cost of holding the election.

(e) The ballots for the election shall be prepared to permit voting for or against the proposition: "The disannexation of (name of the area) from the City of (name of municipality) and the reestablishment of any municipal utility district or other special district serving (name of the area)." The county shall designate the name of the area based on a name commonly used in the region to identify the area.

(f) If a majority of the votes cast at the election favor the proposition, the area is disannexed from the municipality and any municipal utility district or other special district that served the area on the date the area was annexed and that was abolished as a result of the annexation is reestablished on the date of the canvass of the election. The officers of a municipal utility district or other special district who were serving on the date the area was annexed are the officers of the district reestablished under this subsection. If an officer's term has expired, the officer shall serve until a successor is qualified, and the successor shall be elected or appointed in a timely manner in accordance with the law governing the district.

(g) If less than a majority of the votes cast at the election favor the proposition, the area remains a part of the municipality and another election to disannex the area may not be held under this section.

(h) The municipality may not annex again any portion of an area that is disannexed under this section unless the subsequent annexation is approved at an election held by the municipality in the area to be annexed. The municipality may not annex the area under this subsection unless a majority of the votes cast in the area approve the annexation.

(i) Not later than the 10th day after the date a disannexation occurs under this section, an arbitration panel shall be appointed. The panel is composed of:

(1) one person chosen by the municipality;

(2) one person chosen by the affirmative vote of a representative of each municipal utility district or other special district serving the disannexed area; and

(3) one person chosen jointly by the persons chosen under Subdivisions (1) and (2), or, if an agreement cannot be reached on the choice, one person appointed by the county judge of the county in which the area is located.

(j) The arbitration panel shall conduct an accounting of all expenses the municipality and each municipal utility district and other special district incurred during the annexation and disannexation process, including an accounting of the assets and obligations of each special district at the time of the annexation and the capital expenditures of the municipality on behalf of the disannexed area during the time the area was included as part of the municipality. Not later than the 120th day after the date of disannexation, the arbitration panel shall issue a decision on whether the municipality is entitled to compensation from a special district or whether a special district is entitled to compensation from the municipality.

(k) A party to the arbitration may appeal the decision of the arbitration panel to a district court of the county in which the area is located, and the court shall review the decision under the substantial evidence rule. If the arbitration panel is unable to reach a majority decision, the municipality or an affected special district may file an original action for an accounting as provided by Subsection (j) in a district court of the county in which the area is located.

(l) Except as provided by this section, Chapter 171, Civil Practice and Remedies Code, applies to an arbitration under this section.

(m) In this section, an area is considered to be located in the county in which a majority of the area is located.

(n) If the tract is located in more than one county:

(1) the county clerk of the county in which a majority of the area is located shall conduct the verification procedure described by Subsection (b); and

(2) the county judge of each county in which the area is located shall call an election under Subsection (c) to be held in the part of the area that is located in the county in which the county judge serves.

(o) If an election is called under Subsection (n)(2) in more than one county, the county judge of the county in which a majority of the area is located shall, after the election returns are canvassed in each county, combine the election returns to determine if the disannexation is approved in the area as a whole.

(3) In SECTION 16 of the bill, in Subsection (d) (House Committee Printing, page 38, line 6), between "43.148," and "and", insert "43.149,".

(4) In SECTION 16 of the bill, in Subsection (e) (House Committee Printing, page 38, line 15), between "43.148," and "and", insert "43.149,".

(5) In SECTION 16 of the bill (House Committee Printing, page 39, between lines 13 and 14), add Subsection (h) to read as follows:

(h) The change in law made by Section 43.149, Local Government Code, as added by this Act, applies to an annexation that occurs before, on, or after the effective date of this Act.

Floor Amendment No. 15

Amend **CSSB 89** as follows:

(1) In SECTION 14 of the bill, in the recital to that section (Committee Printing page 34, line 8), strike "Section 43.905" and substitute "Sections 43.905 and 43.906".

(2) In SECTION 14 of the bill, add Section 43.906, Local Government Code (Committee Printing page 35, between lines 11 and 12), to read as follows:

Sec. 43.906. VOTING RIGHTS AFTER ANNEXATION. Notwithstanding Section 276.006, Election Code, a municipality that annexes an area may not prevent a qualified voter residing in the area from voting in a regularly scheduled municipal election for any reason, including the failure to obtain preclearance of a voting change from the United States Justice Department.

(3) In SECTION 16 of the bill, in Subsection (d) (Committee Printing page 38, line 6), strike "and 43.905," and substitute "43.905, and 43.906,".

(4) In SECTION 16 of the bill, in Subsection (e) (Committee Printing page 38, line 15), strike "and 43.905," and substitute "43.905, and 43.906,".

Floor Amendment No. 16

Amend the Madden amendment to **CSSB 89** by striking Section 43.906, Local Government Code (Madden Amendment page 1, lines 8-13) and substituting the following:

Sec. 43.906. VOTING RIGHTS AFTER ANNEXATION. (a) In connection with an annexation or proposed annexation, a municipality shall apply for preclearance under Section 5, Voting Rights Act of 1965, of any voting change resulting from the annexation or proposed annexation from the United States Justice Department not later than the 90th day before the effective date of the annexation or the earliest date permitted under federal law.

(b) Notwithstanding Section 276.006, Election Code, a municipality that annexes an area may not prevent a qualified voter residing in the area from voting in a regularly scheduled municipal election for any reason if the municipality has obtained preclearance of the voting change from the United States Justice Department.

Floor Amendment No. 19

Amend **CSSB 89** by adding a new SECTION to the bill to be numbered appropriately to read as follows and by renumbering the other SECTIONS of the bill accordingly:

SECTION ____. This Act does not affect in any way any contract or other agreement existing on the effective date of this Act to which a municipality is a party.

Floor Amendment No. 20

Amend **CSSB 89** as follows:

(1) Insert the following appropriately numbered section to the bill and renumber subsequent sections of the bill appropriately:

SECTION __. Section 43.054(a), Local Government Code, is amended to read as follows:

(a) A municipality with a population of less than 1.6 million may not annex a publicly or privately owned area, including a strip of area following the course of a road, highway, river, stream, or creek, unless the width of the area at its narrowest point is at least 1,000 feet.

(2) In SECTION 5 of the bill, in the recital to that section (Committee Printing page 9, line 23), strike "Section 43.0545" and substitute "Sections 43.0545 and 43.0546".

(3) In SECTION 5 of the bill, after added Section 43.0545, Local Government Code (Committee Printing page 10, between lines 24 and 25), insert the following:

Sec. 43.0546. ANNEXATION OF CERTAIN ADJACENT AREAS BY POPULOUS MUNICIPALITIES. (a) In this section, "municipal area" means the area within the corporate boundaries of a municipality other than:

(1) an area annexed prior to the effective date of this section that is less than 1,000 feet wide at any point;

(2) an area within the corporate boundaries of the municipality that was annexed by the municipality prior to the effective date of this section and at the time of the annexation the area was contiguous to municipal territory that was less than 1,000 feet wide at any point;

(3) an area annexed after December 1, 1995, and before the effective date of this section;

(4) municipally owned property; or

(5) an area contiguous to municipally owned property if the municipally owned property was annexed in an annexation that included an area that was less than 1,000 feet wide at its narrowest point.

(b) This section applies only to a municipality with a population of 1.6 million or more.

(c) A municipality to which this section applies may not annex an area that is less than 1,500 feet wide at any point. At least 1,500 feet of the perimeter of the area annexed by a municipality must be conterminous with the boundary of the municipal area of the municipality.

(d) This section does not apply to territory:

(1) that is completely surrounded by municipal area;

(2) for which the owners of the area have requested annexation by the municipality;

(3) within a district whose elected board of directors has by a majority vote requested annexation;

(4) owned by the municipality; or

(5) that contains fewer than 50 inhabitants.

(4) In SECTION 16 of the bill, in Subsections (a), (c), and (g) (Committee Printing, page 37, line 15; page 37, line 21; and page 39, line 6), correct the references to specific sections of the bill to take into account the renumbering of the sections of the bill required by item (1) of this amendment, and in correcting those references in Subsection (c) include a reference to the section added by item (1) of this amendment.

(5) In SECTION 16(d) of the bill (Committee Printing page 38, line 5), strike "43.0545," and substitute "43.054, 43.0545, 43.0546,".

(6) In SECTION 16(e) of the bill (Committee Printing page 38, line 14), strike "43.0545," and substitute "43.054, 43.0545, 43.0546,".

Floor Amendment No. 22

Amend **CSSB 89** by striking Section 43.056(b), Local Government Code (Committee Printing page 11, line 11, through page 12, line 6) and substituting the following:

(b) The service plan must include a program under which the municipality will provide full municipal services in the annexed area no later than 2-1/2 [~~4-1/2~~] years after the effective date of the annexation, in accordance with Subsection (e), unless that period is extended by an arbitration decision issued under this chapter or by agreement between the municipality and the party with which the municipality is required to negotiate for services under this subchapter [~~(d)~~]. If the area was annexed after December 1, 1998, and before September 1, 1999, the municipality shall provide sewer services in the annexed area as provided by this subsection, except that, no later than five years after the effective date of the annexation, the municipality may not provide sewer services in the annexed area in by means of a packing station. However, under the program the municipality must provide the following services in the area on [~~within 60 days after~~] the effective date of the annexation of the area:

(1) police protection;

(2) fire protection;

(3) emergency medical services;

(4) solid waste collection;

(5) operation and [~~(4)~~] maintenance of water and wastewater facilities in the annexed area that are not within the service area of another water or wastewater utility;

(6) operation and [~~(5)~~] maintenance of roads and streets, including road and street lighting;

(7) operation and [~~(6)~~] maintenance of parks, playgrounds, and swimming pools; and

(8) operation and [~~(7)~~] maintenance of any other publicly owned facility, building, or service.

Floor Amendment No. 23

Amend **CSSB 89** by adding the following SECTION ___ and renumbering the subsequent sections appropriately:

SECTION ___. Subchapter D, Chapter 43, Local Government Code, is amended by adding Section 43.0712 to read as follows:

"Section 43.0712. (a) If a municipality enacts an ordinance to annex a special district and assumes control and operation of utilities within the district, and the annexation is invalidated by a final judgment of a court of competent jurisdiction, the municipality is deemed, by enactment of its annexation ordinance, to have acquired title to utilities owned by a developer within the special district and is obligated to pay the developer all amounts related to the utilities as provided in Sec. 43.0715 of this code.

(b) Upon resumption of the functions of the special district:

(1) the municipality shall succeed to the contractual rights of the developer to be reimbursed by the special district for the utilities the municipality acquires from the developer; and

(2) the special district shall resume the use of the utilities acquired and paid for by the municipality, and shall thereafter issue bonds to acquire the utilities from the municipality and reimburse the municipality for amounts the municipality paid the developer. The issuance of bonds by the special district and the payment to the

municipality shall be governed by the requirements of the Texas Natural Resources Conservation Commission for the issuance of the bonds.

(c) This section takes effect September 1, 1999 and applies to municipal annexation ordinances enacted before or after the effective date of this section."

Floor Amendment No. 1 on Third Reading

Amend **CSSB 89**, on third reading, in Section 43.052(h), Local Government Code, as amended by the 2nd reading amendments by Bosse and Hawley, by striking "the area is the subject of an industrial district contract under Section 42.004 or a strategic partnership agreement under Section 43.0751" and substituting the following:

"the area is or was the subject of:

(A) an industrial district contract under Section 42.004;

(B) a strategic partnership agreement under Section 43.0751; or

Floor Amendment No. 2 on Third Reading

Amend **CSSB 89** on third reading by striking Sections 43.149(c) and (d), Local Government Code, as added by the Wilson amendment on 2nd reading and substituting the following:

(c) If the county clerk determines that a petition filed under Subsection (b) is valid or if the county clerk fails to make a determination within the period prescribed by Subsection (b), the county judge shall order the election to be held on the first uniform election date that occurs after the 45th day after:

(1) the earlier of the date:

(A) the county clerk determines the petition is valid; or

(B) the period for making a determination under Subsection (b) expires; or

(2) the date the county obtains preclearance from the United States Department of Justice as provided by Subsection (d) if the county obtains preclearance after the date prescribed by Subdivision (1).

(d) Before holding an election under this section, the county must obtain from the United States Department of Justice in a timely manner preclearance under Section 5, Voting Rights Act of 1965 (42 U.S.C. Section 1973 et seq.), and its subsequent amendments, of any voting change resulting from the application of this section. Only a registered voter residing in the area may vote in the election. The municipality that annexed the area shall pay the cost of holding the election.

Floor Amendment No. 3 on Third Reading

Amend **CSSB 89** on third reading, in Section 43.056(b), Local Government Code, as amended by the Dunnam amendment on 2nd reading, by striking "in by means of a packing station" and substituting "by means of a package wastewater treatment plant".

The amendments were read.

Senator Madla moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **SB 89** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Madla, Chair; Lindsay, Lucio, Nixon and Ogden.

(Senator Carona in Chair)

SENATE BILL 1703 WITH HOUSE AMENDMENT

Senator Ellis called **SB 1703** 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 1703** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to loan assistance for low-income individuals and families.

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

SECTION 1. Chapter 2306, Government Code, is amended by adding Subchapter FF to read as follows:

SUBCHAPTER FF. PILOT INTERIM CONSTRUCTION LOAN PROGRAM

Sec. 2306.751. DEFINITIONS. In this subchapter:

(1) "Construction supply company" means a retail or wholesale entity that sells construction equipment and supplies for home construction and home improvements.

(2) "Nonprofit housing assistance organization" means a nonprofit entity that aids low-income persons in acquiring affordable housing and includes an entity that provides construction equipment and supplies or technical assistance for home construction or home improvements.

(3) "Owner-builder" means a person who owns a piece of real property, either through a contract for deed or a warranty deed, and who undertakes to make improvements to that property. The term does not include a person who owns or operates a construction business.

Sec. 2306.752. PILOT INTERIM CONSTRUCTION LOAN PROGRAM. (a) To provide for the development of affordable housing in this state, the department shall establish a pilot program in which the department:

(1) cooperates with construction supply companies or nonprofit housing assistance organizations to provide interim construction loans for owner-builders; and

(2) provides other services that facilitate the implementation of the program, including assistance in refinancing interim construction loans to provide private market-rate mortgages for owner-builders who participate in the program.

(b) An interim construction loan under this program may provide resources to:

(1) build new residential housing; or

(2) develop, renovate, or otherwise make basic repairs or improvements to existing residential housing.

(c) An interim construction loan under this program may not provide resources to finance a luxury item or other improvement that is not a basic improvement or repair necessary for a housing unit to comply with minimum building code standards.

(d) The department may adopt rules necessary to accomplish the purposes of this subchapter.

Sec. 2306.753. PARTICIPATION AGREEMENT. (a) Under the program, the department may enter into a participation agreement with one or more construction supply companies or nonprofit housing assistance organizations to provide loan guarantees from the department for interim construction loans made by the company or organization to eligible owner-builders under this subchapter.

(b) The department by rule shall establish a limit for the percentage of an interim construction loan that the department guarantees under the program that is based on the estimated value of the property after the improvements to the property are completed. The department may not agree to a guarantee for an interim builder loan issued to an owner-builder by a participating construction supply company or nonprofit housing assistance organization that exceeds that limit.

(c) The department may not make an agreement with a construction supply company or nonprofit housing assistance organization under the program unless the participation agreement allows the department to annually renegotiate the guarantee percentage for an interim construction loan issued by the construction supply company or nonprofit housing assistance organization. The department shall renegotiate the terms of an interim construction loan guarantee when possible to obtain a better guarantee percentage for the state from the construction supply company or nonprofit housing assistance organization.

(d) A participating construction supply company or nonprofit housing assistance organization may require an owner-builder to provide a warranty deed for the property that is the proposed subject of the interim construction loan as collateral for the loan.

Sec. 2306.754. OWNER-BUILDER ELIGIBILITY. (a) The department shall establish eligibility requirements for owner-builders to participate in the program. The eligibility requirements must include a priority for owner-builders who are individuals or families of very low or extremely low income.

(b) The department may select nonprofit housing assistance organizations to certify the eligibility of owner-builders to participate in the interim construction loan program. A nonprofit housing assistance organization selected by the department shall use the eligibility requirements established by the department to certify the eligibility of an owner-builder for the program.

Sec. 2306.755. PARTICIPANT DUTIES. A construction supply company or nonprofit housing assistance organization that participates in the program shall:

(1) administer the interim construction loan;

(2) provide technical assistance to the owner-builder for improvements made to the property;

(3) perform the necessary inspections for improvements made to the property; and

(4) warrant that funds provided under the interim construction loan have been used exclusively for eligible purposes under this subchapter.

Sec. 2306.756. REFINANCING ASSISTANCE. (a) The department shall assist an owner-builder who obtains an interim construction loan under the program to refinance the loan to:

(1) pay the balance of the interim construction loan; and

(2) obtain a mortgage loan on the improved property.

(b) The department shall identify:

(1) private lenders to provide private market-rate mortgages for low-income owner-builders who obtain loans under the program; and

(2) nonprofit housing assistance organizations and housing assistance programs to aid owner-builders who do not qualify for private market-rate mortgages.

Sec. 2306.757. FUNDING. (a) The department may not spend state money to fund a loan guarantee issued under this subchapter.

(b) The department shall identify funds that are appropriate for the program.

(c) The department may cooperate with nonprofit housing assistance organizations to establish loan guarantee pools that may be used to obtain loans for the purposes of this subchapter.

Sec. 2306.758. REPORTING DUTIES. The department shall:

(1) compose an annual report that evaluates the repayment history and any coinciding loan guarantee issued under a program under this subchapter;

(2) report the loan amounts, uses, nature of improvements funded, and the incomes of the owner-builders who participate in the program;

(3) make recommendations to improve the effectiveness and efficiency of the program; and

(4) deliver a copy of the report to the governor, the lieutenant governor, and the speaker of the house of representatives.

SECTION 2. (a) This Act takes effect September 1, 1999.

(b) The Texas Department of Housing and Community Affairs shall deliver the first report required by Section 2306.758, Government Code, as added by this Act, not later than January 1, 2001.

(c) The Texas Department of Housing and Community Affairs shall select an economically distressed area, as defined by Section 16.341, Water Code, in which to implement the pilot program required by Subchapter FF, Chapter 2306, Government Code, as added by this Act.

(d) The Texas Department of Housing and Community Affairs may not enter into a participation agreement under the pilot program authorized by Subchapter FF, Chapter 2306, Government Code, as added by this Act, on or after September 1, 2001.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Ellis moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1703** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ellis, Chair; Jackson, Duncan, Shapleigh, and Zaffirini.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 177

Senator Ratliff submitted the following Conference Committee Report:

Austin, Texas
May 24, 1999

Honorable Rick Perry
President of the Senate

Honorable James E. "Pete" Laney
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 177** 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.

RATLIFF	JUNELL
TRUAN	WEST
MONCRIEF	COLEMAN
DUNCAN	GALLEGO
FRASER	HEFLIN
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to provisions that authorize, restrict, or prohibit expenditures by public entities, including codification of provisions in the General Appropriations Act.

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

SECTION 1. Chapter 556, Government Code, is amended to read as follows:

CHAPTER 556. POLITICAL ACTIVITIES BY CERTAIN PUBLIC ENTITIES AND INDIVIDUALS [~~STATE AGENCIES AND EMPLOYEES~~]

Sec. 556.001. DEFINITIONS. In this chapter:

(1) "Appropriated money" means money appropriated by the legislature through the General Appropriations Act or other law.

(2) "State agency" means:

(A) a department, commission, board, office, or other agency in the executive branch of state government, created under the constitution or a statute, with statewide authority;

(B) a university system or an institution of higher education as defined by Section 61.003, Education Code; or

(C) the supreme court, the court of criminal appeals, another entity in the judicial branch of state government with statewide authority, or a court of appeals [~~, or the Texas Judicial Council~~].

(3) [~~(2)~~] "State employee" means an individual who is employed by a state agency. The term does not include an elected official or an individual appointed to office by the governor or another officer [~~subject to approval by the senate~~].

(4) "State officer" means an individual appointed to office by the governor or another officer.

Sec. 556.002. APPLICATION TO CERTAIN ENTITIES AND INDIVIDUALS [~~EXCEPTION~~]. (a) This chapter applies to the use of appropriated money by the following public entities and their officers and employees as if the entities were state agencies and their officers and employees were state employees:

(1) a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Local Government Code;

(2) a local workforce development board created under Subchapter F, Chapter 2308; and

(3) a community center created under Subchapter A, Chapter 534, Health and Safety Code.

(b) This chapter does not prohibit the payment of reasonable dues to an organization that represents student interests before the legislature or the Congress of the United States from that portion of mandatory student service fees that is allocated to the student government organization at an institution of higher education. A mandatory student service fee may not be used to influence the outcome of an election. [~~Except for Section 556.006, this chapter does not apply to an individual employed by the Department of Public Safety.~~]

Sec. 556.003. STATE EMPLOYEES' RIGHTS. A state employee has the rights of freedom of association and political participation guaranteed by the state and federal constitutions except as provided by Section 556.004.

Sec. 556.004. PROHIBITED ACTS OF AGENCIES AND INDIVIDUALS [~~STATE EMPLOYEES~~]. (a) A state agency may not use any money under its control, including appropriated money, to finance or otherwise support the candidacy of a person for an office in the legislative, executive, or judicial branch of state government or of the government of the United States. This prohibition extends to the direct or indirect employment of a person to perform an action described by this subsection.

(b) A state officer or employee may not use a state-owned or state-leased motor vehicle for a purpose described by Subsection (a).

(c) A state officer or employee may not[~~:~~

[~~(1)~~] use official authority or influence or permit the use of a program administered by the state agency of which the person is an officer or employee to interfere with or affect the result of an election or nomination of a candidate or to achieve any other political purpose.

(d) A state employee may not[~~; or~~

[~~(2)~~] coerce, attempt to coerce, command, restrict, attempt to restrict, or prevent the payment, loan, or contribution of any thing of value to a person or political organization for a political purpose.

(e) [~~(b)~~] For purposes of Subsection (c) [~~this section~~], a state officer or employee does not interfere with or affect the results of an election or nomination if the

individual's [~~employee's~~] conduct is permitted by a law relating to the individual's office or employment and is not otherwise unlawful.

Sec. 556.005. EMPLOYMENT OF LOBBYIST [~~VIOLATION~~]. (a) A state agency may not use appropriated money to employ, as a regular full-time or part-time or contract employee, a person who is required by Chapter 305 to register as a lobbyist. Except for an institution of higher education as defined by Section 61.003, Education Code, a state agency may not use any money under its control to employ or contract with an individual who is required by Chapter 305 to register as a lobbyist.

(b) A state agency may not use appropriated money to pay, on behalf of the agency or an officer or employee of the agency, membership dues to an organization that pays part or all of the salary of a person who is required by Chapter 305 to register as a lobbyist.

(c) A state agency that violates Subsection (a) is subject to a reduction of amounts appropriated for administration by the General Appropriations Act for the biennium following the biennium in which the violation occurs in an amount not to exceed $100,000 for each violation [~~employee who violates Section 556.004 is subject to immediate termination of employment~~].

(d) A state agency administering a statewide retirement plan may enter into a contract to receive assistance or advice regarding the qualified tax status of the plan or on other federal matters affecting the administration of the state agency or its programs if the contractor is not required by Chapter 305 to register as a lobbyist.

Sec. 556.0055. RESTRICTIONS ON LOBBYING EXPENDITURES. (a) A political subdivision or private entity that receives state funds may not use the funds to pay:

(1) lobbying expenses incurred by the recipient of the funds;

(2) a person or entity that is required to register with the Texas Ethics Commission under Chapter 305;

(3) any partner, employee, employer, relative, contractor, consultant, or related entity of a person or entity described by Subdivision (2); or

(4) a person or entity that has been hired to represent associations or other entities for the purpose of affecting the outcome of legislation, agency rules, ordinances, or other government policies.

(b) A political subdivision or private entity that violates Subsection (a) is not eligible to receive additional state funds.

Sec. 556.006. LEGISLATIVE LOBBYING. (a) A state agency may not use appropriated money to attempt to influence the passage or defeat of a legislative measure.

(b) This section does not prohibit a state officer or employee from using state resources to provide public information or to provide information responsive to a request.

Sec. 556.007. TERMINATION OF EMPLOYMENT. A state employee who causes an employee to be discharged, demoted, or otherwise discriminated against for providing information under Section 556.006(b) or who violates Section 556.004(c) or (d) is subject to immediate termination of employment.

Sec. 556.008. COMPENSATION PROHIBITION. A state agency may not use appropriated money to compensate a state officer or employee who violates Section 556.004(a), (b), or (c) or Section 556.005 or 556.006(a), or who is subject to termination under Section 556.007.

Sec. 556.009. NOTICE OF PROHIBITIONS. (a) A state agency shall provide each officer and employee of the agency a copy of Sections 556.004, 556.005, 556.006, 556.007, and 556.008 and require a signed receipt on delivery. A new copy and receipt are required if one of those provisions is changed.

(b) A state agency shall maintain receipts collected from current officers and employees under this section in a manner accessible for public inspection.

SECTION 2. Section 653.009, Government Code, is amended to read as follows:

Sec. 653.009. PAYMENT OF PREMIUMS. The state, as beneficiary, shall pay premiums on bonds under this chapter from:

(1) money appropriated by the legislature for that purpose;

(2) money appropriated by the legislature to a state agency that may be used for:

(A) administration or administration expense;

(B) operation expense;

(C) general operation expense;

(D) maintenance;

(E) miscellaneous expense; or

(F) contingencies; or

(3) money of a state agency that:

(A) is outside the state treasury; and

(B) may be used by the agency for operational expenses of the agency.

SECTION 3. Subchapter F, Chapter 2054, Government Code, is amended by adding Section 2054.1185 to read as follows:

Sec. 2054.1185. DELAY OF TECHNOLOGY INITIATIVE. (a) A state agency may request permission from the Legislative Budget Board and the budget division of the governor's office to delay implementation of a technology initiative, including a major information resources project as defined by Section 2054.118, if the implementation would significantly interfere with the state agency's ability to prepare adequately for the millennium date change and its attendant problems.

(b) A request for permission for a delay must be submitted in writing to the Legislative Budget Board and the budget division of the governor's office. Those entities may require the requesting state agency to provide any information the entities consider necessary for the proper evaluation of the request and may require the department or any other state agency to assist in evaluating the request.

(c) If the Legislative Budget Board and the budget division of the governor's office determine that a state agency has provided sufficient evidence of a need for a delay in implementation of a technology initiative, the agency shall be notified in writing of the determination and shall be permitted to delay implementation for the time specified by the Legislative Budget Board and the budget division of the governor's office.

SECTION 4. Subtitle C, Title 10, Government Code, is amended by adding Chapter 2113 to read as follows:

CHAPTER 2113. USE OF APPROPRIATED MONEY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2113.001. DEFINITIONS. In this chapter:

(1) "Appropriated money" means money appropriated by the legislature through the General Appropriations Act or other law.

(2) "State agency" means:

(A) a department, commission, board, office, or other entity in the executive branch of state government;

(B) the supreme court, the court of criminal appeals, another entity in the judicial branch of state government with statewide authority, or a court of appeals; or

(C) a university system or an institution of higher education as defined by Section 61.003, Education Code, except that a public junior college is excluded from the meaning of the term in Subchapter D and all of Subchapter C except Section 2113.101.

[Sections 2113.002 to 2113.010 reserved for expansion]

SUBCHAPTER B. RESTRICTIONS ON OFFICERS AND EMPLOYEES

Sec. 2113.011. PUBLICITY. (a) A state agency may not use appropriated money to publicize or direct attention to an individual officer or employee of state government.

(b) A state agency may not use appropriated money to:

(1) maintain a publicity office or department;

(2) employ an individual who has the title or duties of a public relations or press agent; or

(3) pay a public relations agent or business.

(c) Subject to Section 2113.107(d), the executive head of a state agency who considers it necessary or in the public interest may issue through agency channels oral or written information relating to the activities or legal responsibilities of the agency. The information must be issued in the name of the state agency and include the name of the individual authorized to issue the information.

(d) An institution of higher education may operate a news and information service for the benefit of the public if the operation has been authorized and approved by the institution's governing body.

(e) This section does not prohibit the use of appropriated money for publicity functions authorized under Chapter 193, Acts of the 56th Legislature, Regular Session, 1959 (Article 6144e, Vernon's Texas Civil Statutes).

Sec. 2113.012. USE OF ALCOHOLIC BEVERAGES. A state agency may not use appropriated money to compensate an officer or employee who uses alcoholic beverages on active duty.

Sec. 2113.013. USE OF MOTOR VEHICLE. (a) Except as provided by Subsection (b), an officer or employee of a state agency may not use a state-owned or state-leased motor vehicle except on official state business.

(b) The administrative head of a state agency may authorize an officer or employee to use a state-owned or state-leased motor vehicle to commute to and from work when the administrative head determines that the use may be necessary to ensure that vital agency functions are performed. The name and job title of each individual authorized under this subsection, and the reasons for the authorization, must be included in the annual report required by law.

(c) A state agency may not use appropriated money to compensate an individual who violates Subsection (a).

Sec. 2113.014. EMPLOYEE STANDARDS OF CONDUCT. (a) A state agency may not use appropriated money to compensate a state employee who violates a standard of conduct described by Section 572.051.

(b) A state agency shall provide each state employee it employs a copy of this section and the standards of conduct described by Section 572.051 and require a signed receipt on delivery. A new copy and receipt are required if one of those provisions is changed.

(c) A state agency shall maintain receipts collected from current state employees under this section in a manner accessible for public inspection.

[Sections 2113.015 to 2113.100 reserved for expansion]

SUBCHAPTER C. RESTRICTIONS ON GOODS AND SERVICES

Sec. 2113.101. ALCOHOLIC BEVERAGES. A state agency may not use appropriated money to purchase an alcoholic beverage except for authorized law enforcement purposes. A state agency may not use appropriated money to pay or reimburse a travel expense that was incurred for an alcoholic beverage.

Sec. 2113.102. AUDITS. (a) A state agency may not use appropriated money to contract with a person to audit the financial records or accounts of the agency except as provided by:

(1) Subsections (b), (c), and (d);

(2) Chapter 466, pertaining to the state lottery;

(3) Chapter 2306, pertaining to the Texas Department of Housing and Community Affairs; and

(4) Chapter 361, Transportation Code, pertaining to the Texas Turnpike Authority division of the Texas Department of Transportation.

(b) A state agency may use appropriated money to finance a supplemental audit of payments received from the government of the United States if the audit is required as a condition of receipt of the money and an amount for the audit is provided by the federal grant, allocation, aid, or other payment.

(c) A state agency providing grants, loans, or other money to an entity other than a state agency may require, as a condition of receipt of the money, that the recipient have an annual, independent audit performed and submitted to the agency. An agency may require its internal audit staff to make an annual inspection visit to the recipient of the money. After notice of the meeting of the governing body of an agency at which the matter will be included on the agenda, the agency shall take action on any exceptions noted in independent audits received under this subsection and provide documentation of that action to the state auditor, the Legislative Audit Committee, the Legislative Budget Board, and the budget division of the governor's office.

(d) Subsection (a) does not apply to the appointment of an internal auditor under Section 2102.006 or to a contract with the state auditor.

Sec. 2113.103. POSTAGE AND POSTAL SERVICES. (a) A state agency should use the most cost-effective means of postal service available. A state agency may use appropriated money to purchase any form of mailing service available from the United States Postal Service that results in lower cost to the agency and affords service comparable in quality to other available postal services. The General Services Commission shall assist state agencies in determining the types and comparability of postal services available from the United States Postal Service.

(b) Except as provided by Subsections (c) and (d), a state agency may use appropriated money to purchase postage or rent a post office box only from the United States Postal Service.

(c) An agency other than an institution of higher education as defined by Section 61.003, Education Code, that spends for postage in a fiscal year an amount that exceeds the dollar amount set by the General Appropriations Act as the maximum expenditure for postage shall purchase or rent a postage meter machine and record all purchases of postage on the machine except purchases of postage for employees in field offices and traveling employees. The rental of a postage meter machine by a state agency, including an institution of higher education, the legislature, or an agency in the legislative branch of state government, must be from a company approved by the General Services Commission. The General Services Commission by rule shall adopt procedures for the renting entity to pay for postage.

(d) Subsection (b) does not apply to a reimbursement:

(1) to an authorized petty cash account;

(2) to a state employee for an emergency purchase of postage or emergency payment of post office box rent;

(3) that is received by a state agency for authorized services and is appropriated directly to the receiving agency; or

(4) under a contract for mailing services that may include postage, if the contract has been approved by the General Services Commission.

Sec. 2113.104. MEMBERSHIPS IN AND DUES FOR PROFESSIONAL ORGANIZATIONS. (a) Except as provided by Subsection (b), a state agency may not use appropriated money to pay for membership in or dues for a professional organization unless the administrative head of the agency, or that person's designee, first reviews and approves the expenditure.

(b) This section does not apply to a state library.

Sec. 2113.105. INDOOR PLANTS. A state agency may not use appropriated money to purchase, lease, or maintain a live or artificial indoor plant unless the agency is an institution of higher education and the plant is to be used for educational or research purposes.

Sec. 2113.106. STATE FACILITIES FOR MEETINGS, CONFERENCES, AND EXAMINATIONS. A state agency shall use state-owned or state-occupied facilities for meetings, conferences, and administration of group examinations and may not use appropriated money to lease private facilities for these purposes unless

state facilities are not available when needed, are not adequate to accommodate the meeting, conference, or examination, or are not an economically favorable alternative to other facilities.

Sec. 2113.107. PERIODICALS AND OTHER PUBLICATIONS. (a) Except as provided by Subsection (b), a state agency may not use appropriated money to publish a periodical or other publication the cost of which is not reimbursed through revenue attributable to its publication and sale if the publication is:

(1) intended for use by the general public;

(2) generally informational, promotional, or educational; and

(3) not essential to the achievement of a statutory objective of the agency.

(b) Subsection (a) does not apply to:

(1) Texas Highways magazine;

(2) the Texas Parks and Wildlife magazine;

(3) publications of the Texas Commission on Alcohol and Drug Abuse;

(4) attorney general opinions, advisories, and decisions;

(5) comptroller opinions, revenue forecasts, and fiscal analyses;

(6) newsletters;

(7) compilations of statutes or rules; or

(8) annual reports and other materials that are required by law and the content of which includes only topics provided by law.

(c) A state agency may not use appropriated money to publish a publication that prominently displays the name or picture of a person holding an office elected statewide or an appointed officer. In this subsection "appointed officer" has the meaning assigned by Section 572.002. This subsection does not apply to the official state travel map published by the Texas Department of Transportation.

(d) A state agency of which the executive head is an elected officer may not use appropriated money to publish a publication relating to the activities or legal responsibilities of the agency within the 120-day period preceding the date of an election at which the office held by the executive head will be filled.

(e) Except as provided by Subsection (f), a state agency may not use appropriated money to publish a publication on enamel-coated, cast-coated, or dull-coated printing stock or that contains an average of more than one picture for each two pages of the publication unless the agency imposes a fee for the publication in an amount that recovers the cost of publication.

(f) Subsection (e) does not apply to a publication designed to promote tourism or economic development, a publication of the Texas School for the Deaf or the Texas School for the Blind and Visually Impaired, or a publication of an institution of higher education.

(g) A state agency or political subdivision that uses an appropriation to publish a free periodical quarterly or less frequently shall insert annually in an issue of the periodical a notice that anyone wishing to continue receiving the periodical must so request in writing. A state agency or political subdivision that uses an appropriation to publish a free periodical more frequently than quarterly shall insert the notice annually in three consecutive issues of the periodical. The agency or political

subdivision shall provide future issues of the periodical only to persons who have requested it.

[Sections 2113.108 to 2113.200 reserved for expansion]

SUBCHAPTER D. SPECIFICALLY AUTHORIZED USES OF GOODS AND SERVICES

Sec. 2113.201. EMPLOYEE AWARDS. (a) A state agency may use appropriated money to purchase service awards, safety awards, or other similar awards to be presented to its employees for professional achievement or outstanding service under policies adopted by the agency.

(b) The cost of awards purchased under this section may not exceed $50 for an individual employee.

Sec. 2113.202. VOLUNTEER AWARDS. (a) A state agency may use appropriated money to purchase engraved certificates, plaques, pins, or other similar awards to be presented to volunteers for special achievement or outstanding service if the agency has established a volunteer program under Chapter 2109 or other law.

(b) The cost of awards purchased under this section may not exceed $50 for an individual volunteer.

Sec. 2113.203. EXAMINATION FEES. A state agency that conducts examinations shall collect all fees charged to the person being examined for each examination, including the cost of a standardized examination instrument, and use appropriated money to pay a provider of goods or services for a cost incurred by the agency providing the examination.

Sec. 2113.204. MOVING AND STORAGE EXPENSES OF STATE EMPLOYEES. (a) Except as otherwise authorized by the General Appropriations Act, a state agency may use appropriated money to pay the reasonable and necessary expenses incurred in moving the household property only for a state employee who:

(1) is being reassigned from one designated headquarters to another designated headquarters of that agency, if the agency determines that the best interests of the state will be served by the reassignment and the distance between the current and future designated headquarters is at least 25 miles; or

(2) is employed at a facility that is being closed or is undergoing a reduction in force, if the employee accepts a position with the agency at another designated headquarters that is at least 25 miles from the facility being closed or undergoing a reduction in force.

(b) A state agency shall use state-owned equipment for a move authorized by Subsection (a) if it is available to the agency. If state-owned equipment is not available, the agency may pay for the services of a commercial transportation company or for self-service vehicles to make the move.

(c) A state employee is entitled to be reimbursed for reasonable and necessary expenses incurred in traveling by personally owned or leased motor vehicle for a move described by Subsection (a) at the rate provided by the General Appropriations Act for business-related travel by a state employee.

(d) A state agency may pay for or reimburse a state employee for storage expenses incurred if the employee is required to live in state-owned housing and the housing is not available when the agency requires the move to be made.

(e) Reimbursement or payment of an expense under this section is conditioned on the submission to the comptroller of receipts or invoices showing the applicable charges.

(f) This section does not authorize payment or reimbursement of a transaction fee or sales commission for the sale of real property.

Sec. 2113.205. CERTAIN EXPENDITURES INVOLVING TWO FISCAL YEARS. The comptroller shall adopt rules to permit state agencies to use money appropriated for a particular fiscal year to pay expenses related to conducting or attending seminars and conferences that will not occur until the next fiscal year in circumstances when it is cost-effective to do so. The comptroller also shall adopt rules to permit state agencies to use money appropriated for a particular fiscal year to pay expenses for items such as periodical subscriptions and monthly utility charges in circumstances when the billing or subscription period extends to the next fiscal year.

SECTION 5. Subtitle F, Title 10, Government Code, is amended by adding Chapter 2259 to read as follows:

CHAPTER 2259. STATE CONTRACTING STANDARDS AND OVERSIGHT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2259.001. APPLICABILITY. (a) This chapter applies only to each procurement of goods or services made by a state agency that is neither made by the General Services Commission nor made under purchasing authority delegated to the agency by or under Section 51.9335 or 73.115, Education Code, or Section 2155.131, 2155.132, or 2155.133.

(b) This chapter applies to contracts and to contract management activities that are related to the procurements to which it applies.

(c) The General Services Commission on request shall determine whether a procurement or type of procurement:

(1) is made under purchasing authority delegated to an agency by or under Section 2155.131, 2155.132, or 2155.133; or

(2) is made under some other source of purchasing authority.

(d) This chapter does not apply to a procurement made by the Texas Department of Transportation or a procurement paid for by local or institutional funds of an institution of higher education.

(e) This chapter does not apply to a procurement of professional or consulting services that is covered under Chapter 2254.

Sec. 2259.002. DEFINITIONS. In this chapter:

(1) "Contract" includes a grant, other than a grant made to a school district or a grant made for other academic purposes, under which the recipient of the grant is required to perform a specific act or service, supply a specific type of product, or both.

(2) "State agency" has the meaning assigned by Section 2151.002.

Sec. 2259.003. OPEN MARKET PURCHASES. This chapter does not require a state agency to purchase a good or service under contract if the agency is authorized under other law to purchase the good or service on the open market.

[Sections 2259.004 to 2259.050 reserved for expansion]

SUBCHAPTER B. CONTRACTOR SELECTION

Sec. 2259.051. COMPETITIVE CONTRACTOR SELECTION PROCEDURES. Each state agency shall assess its contractor selection procedures and use competitive selection procedures to the greatest extent possible when selecting contractors.

Sec. 2259.052. DETERMINING LOWEST AND BEST BID OR PROPOSAL. (a) In determining the lowest and best bid or proposal, a state agency shall consider:

(1) the vendor's price to provide the good or service;

(2) the probable quality of the offered good or service; and

(3) the quality of the vendor's past performance in contracting with the agency, with other state entities, or with private sector entities.

(b) This section does not apply to a procurement covered by Section 2155.144.

[Sections 2259.053 to 2259.100 reserved for expansion]

SUBCHAPTER C. CONTRACT PROVISIONS

Sec. 2259.101. REMEDIES AND SANCTIONS SCHEDULES. (a) Each state agency shall create and incorporate in each of its contracts for goods or services that are subject to this chapter a remedies schedule, a graduated sanctions schedule, or both, for breach of the contract or substandard performance under the contract.

(b) State agencies shall design fair and feasible standards that will hold contractors accountable for breach of contract or substandard performance under a contract without diminishing the number of able providers who are willing to contract with the state.

Sec. 2259.102. LIABILITY INSURANCE COVERAGE REQUIRED. Each state agency shall, when feasible, include provisions in each of its contracts for goods or services that are subject to this chapter that require the contractor to carry director or officer liability insurance coverage in an amount not less than the value of the contract that is sufficient to protect the interests of the state in the event an actionable act or omission by a director or officer of the contractor damages the state's interests.

[Sections 2259.103 to 2259.150 reserved for expansion]

SUBCHAPTER D. PAYMENT AND REIMBURSEMENT METHODS

Sec. 2259.151. REEVALUATION OF PAYMENT AND REIMBURSEMENT RATES. (a) To ensure that its payment and reimbursement methods and rates are appropriate, each state agency that makes procurements to which this chapter applies shall reevaluate at least biennially its payment and reimbursement methods and rates, especially methods and rates based on historical funding levels or on a formula established by agency rule rather than being based on reasonable and necessary actual costs incurred.

(b) A state agency shall submit formal rate reevaluation information to the Legislative Budget Board and the comptroller on request.

[Sections 2259.152 to 2259.200 reserved for expansion]

SUBCHAPTER E. CONTRACTOR OVERSIGHT

Sec. 2259.201. DOUBLE-BILLING. Each state agency that makes procurements to which this chapter applies shall design and implement procedures to detect and report double-billing by contractors.

Sec. 2259.202. CONTRACT MONITORING RESPONSIBILITIES. As one of its contract management policies, each state agency that makes procurements to which this chapter applies shall establish and adopt by rule a policy that clearly defines the contract monitoring roles and responsibilities, if any, of internal audit staff and other inspection, investigative, or audit staff.

Sec. 2259.203. COMPARABLE COSTS. (a) Each state agency that makes procurements to which this chapter applies shall monitor performance under a contract to verify that comparable costs are being charged for comparable goods and services.

(b) The state auditor on request shall assist a state agency's monitoring efforts under this section.

SECTION 6. Section 391.011(d), Local Government Code, is amended to read as follows:

(d) A commission may not expend funds for an automobile allowance for a member of the governing body of the commission if the member holds another state, county, or municipal office. [~~Funds may be expended for reimbursement of actual travel expenses, including mileage for automobile travel, incurred while the member is engaged in the official business of the commission.~~]

SECTION 7. Chapter 391, Local Government Code, is amended by adding Sections 391.0115 and 391.0116 to read as follows:

Sec. 391.0115. RESTRICTIONS ON COMMISSION COSTS. (a) In reimbursing commission personnel for travel expenses, a commission may not expend funds for travel in excess of the amount of money that may be expended for state personnel under the General Appropriations Act or travel regulations adopted by the comptroller, including any restrictions on mileage reimbursement, per diem, and lodging reimbursement rates.

(b) A member of the governing body of a commission may not be reimbursed from state-appropriated funds, including federal funds, for official travel in an amount in excess of the rates set for travel by state board and commission members. If a hotel is unable or unwilling to provide a commission or its officers or employees a rate equivalent to the rate provided to state employees or if a negotiated conference rate for an officially sanctioned conference or meeting exceeds the applicable state reimbursement rate for lodging, a commission may reimburse for lodging expenses at the rates of the expenses incurred.

(c) A commission may not expend any funds for the purchase of alcoholic beverages or entertainment.

(d) A commission may purchase goods or a service only if the commission complies with the same provisions for purchasing goods or a service that are equivalent to the provisions, including Chapter 252, applying to a local government.

(e) A commission may not spend an amount more than 15 percent of the commission's total expenditures on the commission's indirect costs. For the purposes of this subsection, the commission's capital expenditures and any subcontracts, pass-throughs, or subgrants may not be considered in determining the commission's total direct costs. In this subsection, "pass-through funds" means funds, including subgrants or subcontracts, that are received by a commission from the federal or state

government or other grantor for which the commission serves merely as a cash conduit and has no administrative or financial involvement in the program, such as contractor selection, contract provisions, contract methodology payment, or contractor oversight and monitoring.

(f) In this section, "indirect costs" means costs that are not directly attributable to a single action of a commission. The governor shall use the federal Office of Management and Budget circulars A-87 and A-122 or use any rules relating to the determination of indirect costs adopted under Chapter 783, Government Code, in administering this section.

Sec. 391.0116. RESTRICTIONS ON EMPLOYMENT. (a) An employee of a commission when using state-appropriated funds, including federal funds, is subject to the same rules regarding lobbying and other advocacy activities as an employee of any state agency.

(b) The nepotism provisions of Chapter 573, Government Code, apply to a commission.

SECTION 8. This section provides, for information purposes only, a derivation table for provisions of the General Appropriations Act that are codified in general law by other sections of this Act. The first column identifies the codified law; all references are to the Government Code unless otherwise expressly noted. The second column identifies for each codified law the applicable source provision in Article IX of the General Appropriations Act for the fiscal biennium ending August 31, 1999 (Chapter 1452, Acts of the 75th Legislature, Regular Session, 1997).

Codified Law	Source Provision
Sec. 556.001	drafting convenience
Sec. 556.002(a)	Sec. 5, 9th par.
Sec. 556.002(b)	Sec. 5, 8th par.
Sec. 556.004(a)	Sec. 5, 2nd par.
Sec. 556.004(b)	Sec. 5, 5th par., last clause
Sec. 556.004(c)	Sec. 5, 1st par., 1st clause
Sec. 556.005(a)	Sec. 5, 3rd par.
Sec. 556.005(b)	Sec. 5, 4th par.
Sec. 556.007	existing Sec. 556.005, Govt. Code; Sec. 5, 1st par., last sent.
Sec. 556.008	Sec. 5, 6th par.
Sec. 556.009	Sec. 5, 7th par.
Sec. 653.009	Sec. 12, 2nd par.
Sec. 2113.001	drafting convenience
Sec. 2113.011	Sec. 7
Sec. 2113.012	Sec. 11, 1st sent.
Sec. 2113.013(a)	Sec. 5, 5th par., 1st clause
Sec. 2113.013(b)	Sec. 20.4
Sec. 2113.013(c)	Sec. 5, 6th par.
Sec. 2113.014	Sec. 6
Sec. 2113.101	Sec. 11, 2nd & 3rd sent.
Secs. 2113.102(a), (d)	Sec. 37, 1st par., 1st sent.

Sec. 2113.102(b)	Sec. 37, 3rd par.
Sec. 2113.102(c)	Sec. 37, 4th par.
Sec. 2113.103(a)	Sec. 38, last par.; Sec. 132
Secs. 2113.103(b)-(d)	Sec. 38, 1st, 2nd, & 4th par.
Sec. 2113.104	Sec. 151
Sec. 2113.105	Sec. 54
Sec. 2113.106	Sec. 162
Sec. 2113.107	Sec. 41
Sec. 2113.201	Sec. 12, 3rd par.
Sec. 2113.202	Sec. 12, 4th par.
Sec. 2113.203	Sec. 142
Sec. 2113.204	Sec. 19
Sec. 2113.205	Sec. 74

SECTION 9. This Act does not affect the authority of institutions of higher education to collect, account for, and control local funds and institutional funds in the manner authorized by Subchapter A, Chapter 51, Education Code.

SECTION 10. This Act takes effect September 1, 1999, and applies only to an expenditure made on or after that date.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1592

Senator Duncan submitted the following Conference Committee Report:

Austin, Texas
May 26, 1999

Honorable Rick Perry
President of the Senate

Honorable James E. "Pete" Laney
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 1592** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

DUNCAN	JUNELL
ARMBRISTER	B. TURNER
RATLIFF	SWINFORD
HAYWOOD	CROWNOVER
LUCIO	
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1620

Senator Fraser submitted the following Conference Committee Report:

Austin, Texas
May 26, 1999

Honorable Rick Perry
President of the Senate

Honorable James E. "Pete" Laney
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 1620** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

FRASER	WOHLGEMUTH
DUNCAN	ALEXANDER
ELLIS	HILL
LUCIO	SIEBERT
SHAPIRO	WALKER
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1865

Senator West submitted the following Conference Committee Report:

Austin, Texas
May 26, 1999

Honorable Rick Perry
President of the Senate

Honorable James E. "Pete" Laney
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 1865** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WEST	EDWARDS
CAIN	HUNTER
SHAPLEIGH	S. TURNER
GALLEGOS	GIDDINGS
ELLIS	GOOLSBY
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2684

Senator Gallegos submitted the following Conference Committee Report:

Austin, Texas
May 26, 1999

Honorable Rick Perry
President of the Senate

Honorable James E. "Pete" Laney
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 2684** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

GALLEGOS	COLEMAN
LINDSAY	HILBERT
MADLA	BONNEN
NIXON	Y. DAVIS
NELSON	T. KING
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 3799

Senator Gallegos submitted the following Conference Committee Report:

Austin, Texas
May 27, 1999

Honorable Rick Perry
President of the Senate

Honorable James E. "Pete" Laney
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 3799** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

GALLEGOS	COLEMAN
ELLIS	GALLEGO
LINDSAY	RAMSAY
JACKSON	SALINAS
WHITMIRE	
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2599

Senator Duncan submitted the following Conference Committee Report:

Austin, Texas
May 26, 1999

Honorable Rick Perry
President of the Senate

Honorable James E. "Pete" Laney
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 2599** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

DUNCAN	MCREYNOLDS
ARMBRISTER	COOK
BROWN	SWINFORD
HAYWOOD	ZBRANEK
LUCIO	
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 610

Senator Carona submitted the following Conference Committee Report:

Austin, Texas
May 26, 1999

Honorable Rick Perry
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 610** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

CARONA	JANEK
WHITMIRE	EILAND
FRASER	VAN DE PUTTE
SIBLEY	SEAMAN
DUNCAN	CULBERSON
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1525

Senator Madla submitted the following Conference Committee Report:

Austin, Texas
May 26, 1999

Honorable Rick Perry
President of the Senate

Honorable James E. "Pete" Laney
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 1525** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

MADLA	UHER
NIXON	COLEMAN
LINDSAY	HILDERBRAN
NELSON	MCCLENDON
DUNCAN	URESTI
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the practice of dietetics.

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

SECTION 1. Section 2, Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes), is amended by amending Subdivision (10) and adding Subdivision (13) to read as follows:

(10) "Nutrition services" means:

(A) assessing the nutritional needs of individuals and groups and determining resources and constraints in the practice;

(B) establishing priorities, goals, and objectives that meet nutritional needs and are consistent with available resources and constraints;

(C) providing nutrition counseling in health and disease;

(D) developing, implementing, and managing nutritional care systems; [~~or~~]

(E) evaluating, making changes in, and maintaining appropriate standards of quality in food and nutritional care services; or

(F) providing medical nutrition therapy or a component of medical nutrition therapy.

(13) "Medical nutrition therapy" means nutrition assessment, therapy, and counseling services furnished by a licensed dietitian.

SECTION 2. Section 6, Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d) The board may adopt procedures and standards necessary to determine the qualifications of a person licensed under this Act to provide nutrition services under a law administered by another state agency. Notwithstanding any other law or rule, the board is the only state agency authorized to determine the qualifications of a person

licensed under this Act to provide those services. This subsection does not limit the authority of a person licensed to practice medicine from making a delegation authorized under Section 3.06(d), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes).

SECTION 3. Section 15, Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes), is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) Unless the person is licensed under this Act, a person may not for compensation provide nutrition services or hold that person out as authorized by law to provide nutrition services.

(d) A person commits an offense if the person knowingly or intentionally violates Subsection (a), [~~or~~] (b), or (c) of this section. An offense under this section is a Class B misdemeanor.

SECTION 4. The Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes) is amended by adding Section 15A to read as follows:

Sec. 15A. CONSTRUCTION OF ACT. (a) In this section, "giving advice concerning nutrition" or "providing nutritional advice" means giving information on the use and role of food and food ingredients, including dietary supplements.

(b) Subject to Section 15 of this Act, a person who gives advice concerning nutrition or provides nutritional advice, without receiving compensation for the advice, is not required to be licensed under this Act.

(c) This section does not grant a person authority to:

(1) practice medicine or dietetics;

(2) prevent, treat, or cure a disease, pain, injury, deformity, or physical or mental condition; or

(3) represent that any product might cure a disease, disorder, or condition.

SECTION 5. The Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes) is amended by adding Section 15B to read as follows:

Sec. 15B. NUTRITION SERVICES EXEMPTIONS. This Act does not apply to the provision of nutrition services by:

(1) other licensed health care professionals, including physicians, dentists, chiropractors, registered nurses, and licensed vocational nurses, if the activities are permitted by the law under which the professional is licensed and the licensed professional does not represent that the professional is a licensed dietitian;

(2) a student, intern, or provisional licensed dietitian who is enrolled in training or in a course of study at a regionally accredited institution of higher education and who is under the supervision and direction of a licensed dietitian while engaged in activity related to the training or course of study;

(3) a dietetic technician or dietary manager while practicing under the supervision of a licensed dietitian;

(4) a person employed as a dietitian or nutritionist by a governmental agency or regionally accredited institution of higher education while the person is performing duties within the scope of the person's employment; or

(5) a person performing voluntary activities or who is acting within the scope of the person's employment by a charitable, nonprofit organization if the person does not represent that the person is a licensed dietitian or authorized by law to provide nutrition services.

SECTION 6. This Act takes effect September 1, 1999.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 46

Senator Carona submitted the following Conference Committee Report:

Austin, Texas
May 26, 1999

Honorable Rick Perry
President of the Senate

Honorable James E. "Pete" Laney
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 46** 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	HINOJOSA
ARMBRISTER	GOOLSBY
BROWN	KEEL
DUNCAN	SMITH
WEST	WISE
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the creation of the offense of fraudulent use or possession of identifying information.

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

SECTION 1. Subchapter D, Chapter 32, Penal Code, is amended by adding Section 32.51 to read as follows:

Sec. 32.51. FRAUDULENT USE OR POSSESSION OF IDENTIFYING INFORMATION. (a) In this section:

(1) "Identifying information" means information that alone or in conjunction with other information identifies an individual, including an individual's:

(A) name, social security number, date of birth, and government-issued identification number;

(B) unique biometric data, including the individual's fingerprint, voice print, and retina or iris image;

(C) unique electronic identification number, address, and routing code; and

(D) telecommunication identifying information or access device.

(2) "Telecommunication access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another telecommunication access device may be used to:

(A) obtain money, goods, services, or other thing of value; or

(B) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) A person commits an offense if the person obtains, possesses, transfers, or uses identifying information of another person without the other person's consent and with intent to harm or defraud another.

(c) An offense under this section is a state jail felony.

(d) If a court orders a defendant convicted of an offense under this section to make restitution to the victim of the offense, the court may order the defendant to reimburse the victim for lost income or other expenses, other than attorney's fees, incurred as a result of the offense.

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

SECTION 2. This Act takes effect September 1, 1999.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2145

Senator Whitmire submitted the following Conference Committee Report:

Austin, Texas
May 26, 1999

Honorable Rick Perry
President of the Senate

Honorable James E. "Pete" Laney
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.

WHITMIRE	ALLEN
ARMBRISTER	BERMAN
JACKSON	HAGGERTY
SHAPIRO	MCCLENDON
SHAPLEIGH	B. TURNER
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

MEMORIAL RESOLUTIONS

SR 1149 - by Nelson: In memory of Misty Shawn Burks of North Richland Hills.

SR 1151 - by Moncrief: In memory of the life of Doak Walker.

HCR 268 - (Brown): In memory of Roye Mulholland.

CONGRATULATORY RESOLUTIONS

SR 1147 - by Barrientos: Congratulating John Albert Degollado of Austin.

SR 1148 - by Barrientos: Congratulating Dan Habitzreiter of Austin.

SR 1150 - by Nelson: Congratulating the members of the Young Conservatives of Texas.

SR 1154 - by Sibley: Congratulating Katherine Ann Williamson of Weatherford.

SR 1155 - by Sibley: Congratulating Sara Welsch Williamson of Weatherford.

SR 1156 - by Duncan: Congratulating Bree Stephens, Jared Volger, and Ty Barton, all of Dawson County.

HCR 293 - (Sibley): Congratulating Jose Nino on being named the 1999 Bank One Tucson International Mariachi Conference Mariachi Director-Teacher of the Year.

HCR 305 - (Bivins): Honoring state technology award winners from Midland High School.

HCR 306 - (Bivins): Honoring state technology award winners from Lee High School.

HCR 307 - (Duncan): Honoring Coach Bobby Moegle on his retirement as baseball coach of Lubbock's Monterey High School.

MISCELLANEOUS RESOLUTION

HCR 308 - (Brown): Declaring the month of October "Czech Heritage Month" in Texas.

ADJOURNMENT

On motion of Senator Truan, the Senate at 5:10 p.m. adjourned, in memory of the life of Elaine Grace Miller Bizzell of Georgetown and in memory of Arthur "Duke" Opperman of Lubbock and former Senator William T. Moore of Bryan, until 10:00 a.m. tomorrow.

APPENDIX

SIGNED BY GOVERNOR

May 25, 1999

SCR 54

SENT TO COMPTROLLER

May 27, 1999

SB 928

SENT TO SECRETARY OF STATE

May 27, 1999

SJR 22

SENT TO GOVERNOR

May 27, 1999

SB 23, SB 79, SB 99, SB 139, SB 167, SB 172, SB 260, SB 315, SB 322, SB 352, SB 424, SB 445, SB 451, SB 507, SB 519, SB 529, SB 577, SB 621, SB 627, SB 677, SB 734, SB 792, SB 846, SB 851, SB 916, SB 977, SB 987, SB 1030, SB 1118, SB 1197, SB 1223, SB 1234, SB 1272, SB 1292, SB 1293, SB 1310, SB 1319, SB 1359, SB 1361, SB 1379, SB 1391, SB 1421, SB 1514, SB 1571, SB 1587, SB 1593, SB 1603, SB 1640, SB 1665, SB 1718, SB 1734, SB 1794, SB 1862, SB 1883, SCR 2, SCR 9, SCR 22, SCR 83

In Memory

of

Elaine Grace Miller Bizzell

Senator Ogden offered the following resolution:

(Senate Resolution 1103)

WHEREAS, The Senate of the State of Texas joins the citizens of Georgetown, Texas, in marking the one-year anniversary of the loss of a beloved citizen, Elaine Grace Miller Bizzell, who died on March 28, 1998, at the age of 52; and

WHEREAS, A native of Georgetown, Mrs. Bizzell was born on February 15, 1946, to Charles Miller and Pauline Ischy Miller; her baptism took place on March 24, 1946, at Saint Peter's Lutheran Church in Walburg; at age 13, she was confirmed at Christ Lutheran Church in Georgetown; and

WHEREAS, To the town which she so dearly loved, Mrs. Bizzell dutifully gave back; her entire career was dedicated to serving the citizens of Georgetown; in 1966, she began working with the county clerk's office of Williamson County and was appointed to the county clerk position in 1991; three years later, Mrs. Bizzell won election to that post, and 1998 saw her run unopposed for that same position; and

WHEREAS, Socially active in her community, Mrs. Bizzell was a member of the Georgetown Kiwanis Club, the Twelve O'Clock Club, and the Professional Women of Williamson County; and

WHEREAS, Her faith was an important part of Mrs. Bizzell's life; she served the congregation of Christ Lutheran Church as a member of the Altar Guild and the Teller's Committee, as well as assisting with Lutheran World Relief projects and the church's blood drives; and

WHEREAS, Mrs. Bizzell was an avid fisherman and enthusiastic dancer; she delighted in the company of friends and family; a true lady filled with integrity, strength, and generosity, Mrs. Bizzell will be dearly missed by family and friends and the Georgetown community; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 76th Legislature, hereby celebrate the life and work of Elaine Grace Miller Bizzell; on this, the one-year anniversary of her passing, the Senate extends sincere condolences to the family of Mrs. Bizzell: her son, Thomas Bizzell; her parents, Charles and Pauline Miller; her sisters and brothers-in-law, Carolyn and Dickie Gardner, Kathleen Owens, Karen and Dickie Whiteaker, and Pam and Dale Pope; and the many others who dearly loved this exceptional person; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the members of her family as an expression of deepest sympathy from the Texas Senate, and that when the Senate adjourns this day, it do so in memory of Elaine Grace Miller Bizzell.

The resolution was read.

On motion of Senator Wentworth and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Ogden and by unanimous consent, the resolution was adopted by a rising vote of the Senate.

Senator Ogden, joined by Senator Wentworth, was recognized and introduced to the Senate family members of Elaine Grace Miller Bizzell: her son, Thomas Bizzell; her parents, Charles and Pauline Miller; her sisters and brothers-in-law, Carolyn and Dickie Gardner, Kathleen Owens, Karen and Dickie Whiteaker, and Pam and Dale Pope; accompanied by other family members and friends.

The Senate welcomed its guests and extended its condolences.