# EIGHTY-SECOND DAY

SATURDAY, MAY 29, 1999

## PROCEEDINGS

The Senate met at 10:00 a.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.

**(Senator Ratliff in Chair)**

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

Senate Doorkeeper Don Long offered the invocation as follows:

> Merciful heavenly Father, who looks upon the weakness of Your children more in pity than in anger, and more in love than in pity, we come this day before Your throne of grace asking that You teach these Senators, 31 of the best citizens in Texas, that diplomacy is more than shrewdness. Furnish them with the insights, the rectitude, the resources, and the gifts that will enable them to represent their constituents with nobility and clarity of purpose. Crown their efforts with growth and understanding and goodwill among all the peoples of Texas. And, God, bless each and every one in this Senate Chamber. 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.

## CONFERENCE COMMITTEE ON HOUSE BILL 2954

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 2954** 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 2954** 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; Madla, Armbrister, Bivins, and Gallegos.

**SENATE RESOLUTION 1173**

Senator Zaffirini offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 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 1275**, relating to providing a parent with a copy of a special education student's education plan translated into the parent's native language, to consider and take action on the following matter:

Senate Rules 12.03(3) and (4) are suspended to permit the committee to add text to read as follows:

SECTION 1. Section 29.005, Education Code, is amended by adding Subsection (d) to read as follows:

(d) If the child's parent is unable to speak English, the district shall:

(1) provide the parent with a written or audiotaped copy of the child's individualized education program translated into Spanish if Spanish is the parent's native language; or

(2) if the parent's native language is a language other than Spanish, make a good faith effort to provide the parent with a written or audiotaped copy of the child's individualized education program translated into the parent's native language.

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.

Explanation: This change is necessary to require a school district to provide a copy of an individualized education program in Spanish if a parent's native language is Spanish, and to require, if a parent's native language is a language other than Spanish, a good faith effort to provide the copy in that language.

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

Absent-excused: Luna.

**CONFERENCE COMMITTEE ON HOUSE BILL 1059**

Senator Barrientos 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 1059** 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 1059** 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 Barrientos, Chair; Madla, Whitmire, Zaffirini, and Wentworth.

**SENATE RESOLUTION 1054**

Senator Sibley offered the following resolution:

WHEREAS, The Senate of the State of Texas takes great pleasure in honoring Lisa Lyn Graves on her outstanding high school career and her graduation from Goldthwaite High School; and

WHEREAS, Lisa Lyn Graves was born on April Fool's Day—April 1, 1981, in Goldthwaite, Texas; Lisa is the daughter of Dr. T. C. and Carol Graves, the sister of Debra and Cody Graves, and the granddaughter of Minnie Graves and the late Dr. T. C. Graves and the late Leona and Edwin VanDerLeest; and

WHEREAS, Lisa achieved the prestigious honor of being named valedictorian of Goldthwaite High School, Class of 1999; she earned straight A's from kindergarten through 12th grade; she is a third-generation valedictorian, preceded in this high honor by her father, Dr. Thomas Cody Graves, Goldthwaite High School, Class of 1960, and her grandfather, the late Dr. Thomas Clark Graves, Goldthwaite High School, Class of 1928; and

WHEREAS, Lisa has earned many accolades throughout her high school career, including President of the National Honor Society, President of the United Methodist Youth Fellowship, President of the Future Homemakers of America, and President of her Sophomore Class; she has been named a class officer, a student council member and officer, and Lions Club Honor Banquet Honoree four years in a row; she was voted "Best All-Around" by her peers in 1998 and 1999, was awarded Ms. Goldthwaite High School, and was selected to attend the National Youth Leadership Forum in Washington, D.C.; she was also the recipient of the Mills County State Bank Scholarship and the Mirabeau B. Lamar academic scholarship; and

WHEREAS, Lisa is an outstanding student but is also an impressive athlete; she was a member of the 1998-99 Goldthwaite Lady Eagle basketball team, which qualified for the area tournament, and Lisa served as captain of the team her junior and senior years; she was also a regional cross-country team qualifier; and

WHEREAS, Lisa received many athletic awards throughout her high school career, including: Lady Eagle Defensive Award, Lady Eagle Leading Assist Award, Lady Eagle Golden Heart Award, All-District Co-Most Valuable Defensive Player, All-District Most Valuable Defensive Player, Second Team All-Big Country, and Second Team All-Region; she was nominated for Basketball Academic All-State; and

WHEREAS, Lisa is a kind, loving, and talented young woman who has exemplified the highest academic, athletic, and moral standards and serves as a role model for all Texas youth; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 76th Legislature, hereby extend congratulations to Lisa Lyn Graves on her achievement as valedictorian of her graduating class and wish her continued success in her college career at The University of Texas at Austin; and, be it further

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

SIBLEY
FRASER

The resolution was read.

On motion of Senator Fraser and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Sibley, the resolution was adopted by a viva voce vote.

## SENATE CONCURRENT RESOLUTION 18 WITH HOUSE AMENDMENT

Senator Nixon called **SCR 18** from the President's table for consideration of the House amendment to the resolution.

The Presiding Officer, Senator Ratliff in Chair, laid the resolution and the House amendment before the Senate.

**Amendment**

Amend **SCR 18** by substituting in lieu thereof the following:

CONCURRENT RESOLUTION

WHEREAS, Anderson Columbia Environmental, Inc., alleges that:

(1) on September 26, 1995, it entered into a contract with the Texas Natural Resource Conservation Commission for the implementation of Phase B of the Industrial Remediation project for the United Creosoting Superfund Site;

(2) Anderson Columbia Environmental, Inc., has fulfilled all of its obligations under the contract;

(3) the Texas Natural Resource Conservation Commission failed to give the proper notice required when terminating the contract and has wrongfully withheld payment from Anderson Columbia Environmental, Inc.; and

(4) Anderson Columbia Environmental, Inc., is entitled to recover compensation for the work performed and to other appropriate remedies as provided by the contract, excluding exemplary or punitive damages; now, therefore, be it

RESOLVED by the Legislature of the State of Texas, That Anderson Columbia Environmental, Inc., is granted permission to sue the State of Texas and the Texas Natural Resource Conservation Commission subject to Chapter 107, Civil Practice and Remedies Code; and, be it further

RESOLVED, That the suit authorized by this resolution shall be brought in Travis County; and, be it further

RESOLVED, That the total of all damages awarded in the suit authorized by this resolution, including any court costs, attorney's fees, and prejudgment interest awarded under law, may not exceed $1.5 million, that Anderson Columbia Environmental, Inc., may not plead an amount in excess of that amount in a suit authorized by this resolution, and that this is the total amount that may be recovered with respect to the contract that is the subject of this resolution in all actions brought with respect to that contract; and, be it further

RESOLVED, That the executive director of the Texas Natural Resource Conservation Commission be served process as provided by Section 107.002(a)(3), Civil Practice and Remedies Code.

The amendment was read.

On motion of Senator Nixon, the Senate concurred in the House amendment to **SCR 18** by a viva voce vote.

**SENATE RESOLUTION 1169**

Senator Sibley 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 138**, relating to government restrictions on the exercise of religion, to consider and take action on the following matter:

Senate Rules 12.03(1), (2), and (3) are suspended to permit the committee to omit text relating to a presumption established by certain ordinances, rules, orders, decisions, or practices, and substitute the following new SECTIONS, appropriately numbered:

SECTION ___. Subchapter G, Chapter 61, Human Resources Code, is amended by adding Section 61.097 to read as follows:

Sec. 61.097. APPLICATION OF LAW RELATING TO FREE EXERCISE OF RELIGION. For purposes of Chapter 110, Civil Practice and Remedies Code, an ordinance, rule, order, decision, or practice that applies to a person in the custody of a juvenile detention facility or other correctional facility operated by or under a contract with the commission, a county, or a juvenile probation department is presumed to be in furtherance of a compelling governmental interest and the least restrictive means of furthering that interest. The presumption may be rebutted.

SECTION _____. Chapter 76, Government Code, is amended by adding Section 76.018 to read as follows:

Sec. 76.018. APPLICATION OF LAW RELATING TO FREE EXERCISE OF RELIGION. For purposes of Chapter 110, Civil Practice and Remedies Code, an ordinance, rule, order, decision, or practice that applies to a person in the custody of a correctional facility operated by or under a contract with a community supervision and corrections department is presumed to be in furtherance of a compelling governmental interest and the least restrictive means of furthering that interest. The presumption may be rebutted.

SECTION _____. Chapter 493, Government Code, is amended by adding Section 493.023 to read as follows:

Sec. 493.023. APPLICATION OF LAW RELATING TO FREE EXERCISE OF RELIGION. For purposes of Chapter 110, Civil Practice and Remedies Code, an ordinance, rule, order, decision, or practice that applies to a person in the custody of a jail or other correctional facility operated by or under a contract with the department is presumed to be in furtherance of a compelling governmental interest and the least restrictive means of furthering that interest. The presumption may be rebutted.

SECTION ___. Chapter 361, Local Government Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. RELIGIOUS FREEDOM

Sec. 361.101. APPLICATION OF LAW RELATING TO FREE EXERCISE OF RELIGION. For purposes of Chapter 110, Civil Practice and Remedies Code, an ordinance, rule, order, decision, or practice that applies to a person in the custody of a municipal or county jail or other correctional facility operated by or under a contract with a county or municipality is presumed to be in furtherance of a compelling governmental interest and the least restrictive means of furthering that interest. The presumption may be rebutted.

Explanation: This change is necessary to place text relating to certain government agencies in the law relating specifically to those agencies and to clarify the application of the presumption established by the affected text to certain juvenile detention and other correctional facilities.

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

Absent-excused: Luna.

**SENATE RESOLUTION 1174**

Senator Madla 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 957**, relating to the licensing of certain persons who provide services related to the business of insurance, to consider and take action on the following matter:

Senate Rule 12.03(4) is suspended to permit the committee to add the following text as an appropriately numbered article:

ARTICLE ___. LICENSING REQUIREMENTS FOR AUTOMOBILE CLUBS

SECTION __.01. Subchapter F, Chapter 21, Insurance Code, is amended by adding Article 21.80 to read as follows:

Art. 21.80. LICENSING REQUIREMENTS FOR AUTOMOBILE CLUBS. (a) An automobile club as defined in Section 722.002(2), Transportation Code, may provide insurance service only as provided by this section.

(b) An automobile club may provide a member accidental injury and death benefit insurance coverage through purchase of a group policy of insurance issued to the automobile club for the benefit of its members. The coverage must be purchased from an insurance company authorized to sell that type of coverage in this state. The automobile club shall provide each member covered by the insurance a certificate of participation. The certificate of participation must state on its face in at least 14-point black boldface type that the certificate is only a certificate of participation in a group accidental injury and death policy and is not motor vehicle liability insurance coverage.

(c) An automobile club may endorse insurance products and refer members to agents or insurers authorized to provide the insurance products in this state. The automobile club or an agent of the automobile club may not receive remuneration for the referral.

(d) Except as provided by Subsection (e) of this article, an automobile club performing services permitted by this article is not subject to regulation under the insurance laws of this state because of the performance of those services.

(e) An automobile club may sell insurance products to a member for a consideration separate from the amount that the member pays for membership in the automobile club if the automobile club is properly licensed as an agent under the applicable provisions of this code.

(f) In addition to reimbursement services enumerated in Section 722.002(2), Transportation Code, an automobile club may contract with a member to reimburse the member for expenses the member incurs for towing, emergency road service, and lockout or lost key service, and to provide immediate destination assistance and trip interruption service. The insurance laws of this state do not apply to reimbursement provided under this subsection.

SECTION ___.02. Section 722.013, Transportation Code, is repealed.

Explanation: This change is necessary to regulate the provision of certain insurance through automobile clubs.

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

Absent-excused: Luna.

## SENATE RULE 11.13 SUSPENDED

On motion of Senator Bivins and by unanimous consent, Senate Rule 11.13, which states that no Senate committee or conference committee may meet while the Senate is meeting, was suspended to grant the conference committee on **SB 4** permission to meet.

## CONFERENCE COMMITTEE ON HOUSE BILL 801

Senator Armbrister called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 801** 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 801** 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 Armbrister, Chair; Brown, Nelson, Ratliff, and Sibley.

## SENATE BILL 705 WITH HOUSE AMENDMENTS

Senator Ogden called **SB 705** 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 705** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to providing aid, support, and assistance to agriculture; establishing the agricultural technology program.

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

SECTION 1. (a) SHORT TITLE. This Act may be cited as the Farm and Ranch Recovery Act.

(b) FINDINGS. The legislature finds that:

(1) agriculture is a vital component of a diversified state economy;

(2) agriculture is more directly and substantially affected by adverse weather conditions than other industries;

(3) limited availability of federal crop subsidies and adverse weather conditions present a significant risk to the economic vitality of agricultural enterprises; and

(4) a comprehensive state agricultural policy that addresses changes in federal policy and recurrent adverse weather conditions will promote the growth of agriculture in this state and will avert a public calamity.

(c) PURPOSES. The purposes of this Act are to:

(1) promote economic development by ensuring a diversified economy;

(2) foster the growth of agriculture in this state; and

(3) avert the substantial risk of a public calamity that will likely result if agricultural industries do not receive the benefit of state planning and assistance.

SECTION 2. Title 4, Agriculture Code, is amended by adding Chapter 60 to read as follows:

CHAPTER 60. COMMODITY CRISIS COUNCIL AND MANAGER

Sec. 60.001. DEFINITIONS. In this chapter:

(1) "Agricultural crisis" means an event or condition, including adverse weather conditions, water shortage, disruption in transportation, low commodity prices, an animal health issue, crop disease, or insect infestation, that could disrupt or jeopardize an aspect of the agriculture industry.

(2) "Council" means the Commodity Crisis Council.

(3) "Manager" means the commodity crisis manager.

Sec. 60.002. MANAGER; DUTIES. (a) The commissioner may designate a person, who may be an employee of the department, to serve as manager. The manager is charged with mitigating the impact of any agricultural crisis on commodities and agricultural production.

(b) The manager serves as:

(1) presiding officer of the council;

(2) the representative of the department on the emergency management council established by Executive Order GWB 95-1b; and

(3) the representative of the department on the drought response and monitoring committee under Section 16.055, Water Code.

(c) The manager shall:

(1) manage and coordinate department planning and response to any agricultural crisis, as identified by the commissioner;

(2) develop a state plan to prepare for recurring drought conditions that affect agricultural commodities, including specific response actions, long-term solutions to minimize the effect of drought conditions, and an assessment of which regions of the state and which agricultural products are vulnerable to a drought; and

(3) manage the emergency hay program under Chapter 254.

Sec. 60.003. COUNCIL COMPOSITION; DUTIES. (a) The council is composed of the manager, the members appointed under Subsection (b), and one representative from each of the following agencies appointed by the administrative head of that agency:

(1) the Texas Agricultural Extension Service;

(2) the State Soil and Water Conservation Board; and

(3) the Texas Forest Service.

(b) The commissioner shall appoint not more than five representatives of agricultural industries to serve on the council.

(c) The council shall:

(1) advise the manager in the development of a state plan to address recurring drought conditions;

(2) prepare and submit an informational report to the governor and the legislature for each agricultural crisis, as identified by the commissioner, in this state;

(3) prepare and submit a report to the commissioner to recommend projects for the agri-tech program under Chapter 46;

(4) develop a program through the Texas Agricultural Extension Service to educate agricultural producers and the public about each agricultural crisis, as identified by the commissioner, in this state; and

(5) meet as necessary to carry out the provisions of this section.

(d) The commissioner's appointees serve without compensation, but are entitled to reimbursement for actual expenses incurred in the performance of official council duties, subject to approval of the commissioner. The other council members are entitled to be reimbursed for actual expenses by their representative agencies.

(e) The commissioner shall provide the council with staff necessary to assist the council in carrying out its duties.

SECTION 3. Title 3, Agriculture Code, is amended by adding Chapter 46 to read as follows:

CHAPTER 46. AGRICULTURAL TECHNOLOGY PROGRAM

Sec. 46.001. DEFINITIONS. In this chapter:

(1) "Agricultural crisis" means an event or condition, including adverse weather conditions, water shortage, disruption in transportation, low commodity prices, an animal health issue, crop disease, or insect infestation, that could disrupt or jeopardize an aspect of the agriculture industry.

(2) "Agri-tech program" means the agricultural technology program established under this chapter.

(3) "Applied research" means research directed at gaining the knowledge or understanding necessary to meet a specific and recognized need, including the discovery of new scientific knowledge that has specific objectives relating to products or processes.

(4) "Eligible institution" means an institution of higher education, as that term is defined by Section 61.003, Education Code, that is designated as an eligible institution under Section 46.002(e).

Sec. 46.002. ADMINISTRATION; GUIDELINES AND PROCEDURES. (a) The department shall develop, maintain, and administer the agri-tech program to provide support for eligible institutions to conduct research projects on methods to address agricultural crises in this state.

(b) In awarding funds to support projects under this chapter, the department shall:

(1) give priority to applied research projects that the commissioner determines to be necessary to address an immediate agricultural crisis; and

(2) consider the recommendations of the Commodity Crisis Council for specific projects.

(c) The department shall award funds to support projects as needed to address agricultural crises in this state.

(d) The department shall develop and maintain guidelines and procedures to provide awards under this chapter for specific projects at eligible institutions on a competitive, peer-review basis.

(e) The department shall determine whether an institution of higher education qualifies as an eligible institution for the purposes of this chapter. To be designated as an eligible institution, an institution of higher education must demonstrate an exceptional capability to attract federal, state, and private funding for scientific and technical research and have an exceptionally strong research staff and the necessary equipment and facilities.

(f) In considering projects for selection, the commissioner shall give special consideration to projects that:

(1) leverage funds from other sources; and

(2) propose innovative, collaborative efforts:

(A) across academic disciplines;

(B) involving two or more eligible institutions; or

(C) involving eligible institutions, private industry, and the federal government.

(g) The commissioner may adopt rules necessary to accomplish the purposes of this chapter.

Sec. 46.003. AGRICULTURAL TECHNOLOGY ACCOUNT. (a) The agricultural technology account is an account in the general revenue fund.

(b) The agricultural technology account consists of legislative appropriations, gifts and grants received under Subsection (c), and other money required by law to be deposited in the account.

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

(d) Funds in the agricultural technology account may be used only as provided by this chapter. The account is exempt from the application of Section 403.095, Government Code.

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

Sec. 46.004. USE OF FUNDS IN AGRICULTURAL TECHNOLOGY ACCOUNT. (a) From funds appropriated for the agri-tech program, the comptroller shall issue warrants to each eligible institution in the amount certified by the department to the comptroller.

(b) Funds awarded from the agricultural technology account may be expended to support the particular research project for which the award is made and may not be expended for the general support of research and instruction at the institution conducting or sponsoring the project or for the construction or remodeling of a facility.

(c) Funds in the agricultural technology account shall be used, when practicable within the purposes of this chapter, to match grants provided by the federal government or private industry for specific collaborative research projects at eligible institutions.

(d) Supplies, materials, services, and equipment purchased with funds obtained under this section are not subject to General Services Commission authority.

Sec. 46.005. PROGRESS REPORTS. An institution receiving funds under this chapter shall report on the progress of the funded research to the department not later than September 1 of each year.

Sec. 46.006. MERIT REVIEW. The commissioner shall appoint a committee consisting of representatives of the agriculture industry and of private enterprise advanced technology research organizations to evaluate the agri-tech program's effectiveness. The committee shall report its findings to the department not later than September 1 of the second year of each biennium.

SECTION 4. Title 3, Agriculture Code, is amended by adding Chapter 47 to read as follows:

CHAPTER 47. AGRICULTURE RISK MANAGEMENT EDUCATION

Sec. 47.001. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the increasingly global marketplace and the increasing flexibility in agriculture production decisions expose agricultural producers and agribusinesses to increased income risk;

(2) managing these increased risks is critical to the future economic competitiveness and success of agriculture in this state; and

(3) policymakers, lenders, agribusiness firms, rural community leaders, and researchers will benefit from a better understanding of how farmers and ranchers adapt to different economic, regulatory, and political environments.

(b) The purposes of this chapter are to:

(1) increase risk management educational efforts to help agricultural producers and agribusinesses to:

(A) understand risk and its consideration in decision making;

(B) understand the economic impacts on farms or ranches of adopting new production or information technologies;

(C) understand the economic impacts on farms or ranches of changing agricultural, regulatory, monetary, and fiscal policies; and

(D) measure the relative risk associated with alternative production, marketing, and financial decisions;

(2) establish a statewide educational program that includes a risk management support system and a comprehensive educational curriculum; and

(3) foster the economic competitiveness and success of agriculture in this state.

Sec. 47.002. CREATION OF PROGRAMS. (a) The Texas Agricultural Extension Service shall administer a statewide financial and risk management assistance support system to help farmers and ranchers make long-term strategic planning decisions and adjust their operations to new production, marketing, and financing situations. The support system may include computer and communications technology to provide agricultural producers and agribusinesses with information needed for individual long-term strategic farm or ranch planning.

(b) The extension service shall develop and implement a statewide comprehensive educational curriculum program to provide agricultural producers and agribusinesses with additional information about risk management and potential tools and options to consider in managing risks. The curriculum may include instructional materials, instructors, and other resources in areas of agricultural, regulatory, monetary, and fiscal interest.

(c) The extension service may organize and deliver the programs with the assistance of interested agricultural groups.

Sec. 47.003. ELIGIBILITY FOR EDUCATIONAL MATERIALS AND SERVICES. As a condition for educational assistance under this chapter, the Texas

Agricultural Extension Service shall require that a person pay a subscription fee or other charge in exchange for educational services and materials.

SECTION 5. Title 8, Agriculture Code, is amended by adding Chapter 254 to read as follows:

CHAPTER 254. EMERGENCY HAY PROGRAM

Sec. 254.001. DEFINITION. In this chapter, "manager" means the commodity crisis manager under Chapter 60.

Sec. 254.002. EMERGENCY HAY PROGRAM. (a) The department shall adopt rules and administer a program to provide assistance for the transportation of hay for use by agricultural producers whose production abilities are hindered during periods of natural disaster or other emergencies due to a lack of forage.

(b) The manager shall oversee the program.

Sec. 254.003. EMERGENCY HAY ACCOUNT. (a) The emergency hay account is an account in the general revenue fund.

(b) The emergency hay account consists of legislative appropriations and other money required by law to be deposited in the account.

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

(d) Money in the account may be used only for the purposes of this chapter. The account is exempt from the application of Section 403.095, Government Code.

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

Sec. 254.004. DUTIES OF DEPARTMENT. (a) To provide assistance under this chapter, the department shall:

(1) establish a reciprocal system of waivers to help facilitate the interstate transportation of hay;

(2) create a database to identify public and private haulers that are willing to donate transportation services;

(3) develop and promote a hay and grazing hotline designed to:

(A) connect Texas hay buyers with Texas hay sellers;

(B) connect Texas hay buyers with out-of-state hay sellers;

(C) connect Texas livestock producers that have their own transportation with out-of-state hay donors;

(D) connect donated transportation with hay donors; and

(E) connect livestock owners with grazing leases in and out of Texas; and

(4) develop a plan, with periodic updates, to secure and manage transportation and local distribution of hay donations.

(b) The department shall coordinate its efforts with other emergency relief programs administered by the governor's division of emergency management.

(c) To the extent practicable, the department shall use the resources of the Texas Agricultural Extension Service and of agricultural commodity associations when developing and implementing its plan.

Sec. 254.005. POWERS OF COMMISSIONER. (a) The commissioner may authorize the use of available funds from the emergency hay account to facilitate the transportation of hay to producers when donated resources have been exhausted.

(b) The commissioner may:

(1) negotiate contracts with commercial haulers; and

(2) certify commercial haulers for use during a natural disaster or other emergency.

Sec. 254.006. ELIGIBILITY FOR PROGRAM. The assistance provided under this chapter is available only for agricultural producers located within a county that is declared a federal disaster area.

Sec. 254.007. ASSISTANCE FOR DEPARTMENT. (a) The Texas Agricultural Extension Service shall enter into a memorandum of understanding with the department to assist the department in administering the program.

(b) The assistance provided by the extension service under this section may include:

(1) an assessment of local conditions within a county in which agricultural producers are eligible for assistance under Section 254.006;

(2) the selection of hay distribution sites; and

(3) coordination of volunteer efforts.

(c) The extension service shall develop guidelines for county extension agents to implement this section.

(d) For purposes of this section, a county extension agent may establish an advisory committee of local producers or work with an existing committee.

Sec. 254.008. TERMINATION OF PROGRAM ASSISTANCE. The department shall terminate program assistance in a county if:

(1) the county's federal disaster area designation expires; or

(2) funds in the emergency hay account are depleted.

SECTION 6. Subchapter F, Chapter 661, Government Code, is amended by adding Section 661.152 to read as follows:

Sec. 661.152. LEAVE FOR VOLUNTEER FIREFIGHTERS IN CERTAIN DISASTERS. (a) This section applies only to a state employee who:

(1) is trained as a volunteer firefighter; and

(2) volunteers for duty to prevent or fight fires in an area designated as a federal disaster area as the result of drought conditions.

(b) A person to whom this section applies is eligible for a leave of absence from work as a state employee without loss of compensation or risk of termination for the hours during which the employee serves as a volunteer firefighter in a situation described by Subsection (a)(2).

(c) The state agency that employs a person who requests leave under this section shall verify the person's eligibility to take the leave.

SECTION 7. This Act takes effect September 1, 1999.

SECTION 8. 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 705** (House Committee Printing) as follows:

(1) Strike SECTION 1 of the bill and renumber the subsequent SECTIONS of the bill appropriately.

(2) In SECTION 4 of the bill (page 8, line 11 - page 9, line 12), strike added Section 47.001, Agriculture Code, and renumber added Sections 47.002 and 47.003, Agriculture Code, as Sections 47.001 and 47.002.

**Floor Amendment No. 2**

Amend **CSSB 705** (House Committee Printing) by adding the following appropriately numbered SECTION to the bill and renumbering any subsequent SECTIONS appropriately:

SECTION __. (a) Chapters 46, 47, 60 and 254 Agriculture Code, as added by this Act, each take effect only if a specific appropriation for the implementation and funding of the agricultural program created by the corresponding chapter is provided in **HB 1** (General Appropriations Act), Acts of the 76th Legislature, Regular Session, 1999.

(b) If no specific appropriation for a chapter listed in Subsection (a) of this section is provided in **HB 1** (General Appropriations Act), that chapter has no effect.

(c) A reference to the "commodity crisis manager" in the Agriculture Code refers to the commissioner of agriculture or an employee designated by the commissioner.

**Floor Amendment No. 3**

Amend **CSSB 705** as follows:

Immediately following SECTION 4 of the bill (House Committee Report, page 10, between lines 8 and 9), insert the following appropriately numbered SECTIONS and renumber the subsequent SECTIONS of the bill accordingly:

SECTION ____. Subtitle D, Title 6, Agriculture Code, is amended by adding Chapter 182 to read as follows:

CHAPTER 182. SOUTHERN DAIRY COMPACT

Sec. 182.001. DEFINITIONS. In this chapter:

(1) "Compact" means the Southern Dairy Compact.

(2) "Compact commission" means the Southern Dairy Compact Commission established by Section 4, Article III, of the compact.

(3) "Delegate" means a member of the delegation from this state to the Southern Dairy Compact Commission as set forth in Section 4, Article III, of the compact.

Sec. 182.002. DELEGATES; QUALIFICATIONS. (a) The commissioner shall appoint one delegate to this state's delegation to the compact commission to serve at the pleasure of the commissioner. The commissioner may appoint the commodity crisis manager under Chapter 60 as the delegate under this subsection. If the commissioner appoints a person other than the commodity crisis manager as a delegate, the commissioner's appointee must be an employee of the department, preferably an employee with experience with milk marketing and stabilization. The delegate serving under this subsection shall serve as chair of the delegation from this state.

(b) The governor shall appoint four delegates to this state's delegation to the compact commission as follows:

(1) two delegates who must be dairy farmers engaged in the production of milk at the time of appointment or reappointment;

(2) one delegate who must be a dairy processor engaged in the production of milk at the time of appointment or reappointment; and

(3) one delegate who must be a consumer representative.

(c) Each delegate must be a resident and registered voter of this state.

(d) A delegate is not an officer of this state by virtue of holding the position of delegate.

Sec. 182.003. TERMS; REMOVAL; VACANCY. (a) Each delegate serves a term of four years.

(b) Each delegate shall serve from the date of appointment until a successor is appointed and qualified.

(c) An individual may not serve more than three consecutive terms as a delegate.

(d) A delegate may be removed for cause.

Sec. 182.004. EFFECTIVE DATE OF COMPACT; SUNSET PROVISION. (a) The compact shall become effective when:

(1) the governor has executed the compact in a form substantially similar to that contained in Section 182.005 on behalf of this state and has filed a verified copy of the compact with the secretary of state;

(2) the United States Congress has consented to the compact; and

(3) two or more of the other states named in Section 20, Article VIII, of the compact, have ratified the compact in a form substantially similar to that contained in Section 182.005.

(b) The governor shall take such action as may be necessary to complete the exchange of official documents between this state and any other state ratifying the compact.

(c) This state's delegation to the compact commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the state's delegation to the commission is abolished and this chapter expires September 1, 2003.

Sec. 182.005. COMPACT TO BE ENTERED; TEXT. Subject to Section 182.004, the Southern Dairy Compact is hereby entered into and enacted into law as follows:

ARTICLE I. STATEMENT OF PURPOSE, FINDINGS, AND DECLARATION OF POLICY

Sec. 1. STATEMENT OF PURPOSE, FINDINGS, AND DECLARATION OF POLICY. The purpose of this compact is to recognize the interstate character of the southern dairy industry and the prerogative of the states under the United States Constitution to form an interstate commission for the southern region. The mission of the commission is to take such steps as are necessary to assure the continued viability of dairy farming in the South, and to assure consumers of an adequate, local supply of pure and wholesome milk.

The participating states find and declare that the dairy industry is an essential agricultural activity of the South. Dairy farms, and associated suppliers, marketers, processors, and retailers, are an integral component of the region's economy. Their ability to provide a stable, local supply of pure, wholesome milk is a matter of great importance to the health and welfare of the region.

The participating states further find that dairy farms are essential and they are an integral part of the region's rural communities. The farms preserve land for agricultural purposes and provide needed economic stimuli for rural communities.

By entering into this compact, the participating states affirm that their ability to regulate the price which southern dairy farmers receive for their product is essential to the public interest. Assurance of a fair and equitable price for dairy farmers ensures their ability to provide milk to the market and the vitality of the southern dairy industry, with all the associated benefits.

Recent dramatic price fluctuations, with a pronounced downward trend, threaten the viability and stability of the southern dairy region. Historically, individual state regulatory action had been an effective emergency remedy available to farmers confronting a distressed market. The federal order system, implemented by the Agricultural Marketing Agreement Act of 1937, establishes only minimum prices paid to producers for raw milk, without preempting the power of states to regulate milk prices above the minimum levels so established.

In today's regional dairy marketplace, cooperative, rather than individual state action, is needed to more effectively address the market disarray. Under our constitutional system, properly authorized states acting cooperatively may exercise more power to regulate interstate commerce than they may assert individually without such authority. For this reason, the participating states invoke their authority to act in common agreement, with the consent of the United States Congress, under the compact clause of the United States Constitution.

In establishing their constitutional regulatory authority over the region's fluid milk market by this compact, the participating states declare their purpose that this compact neither displace the federal order system nor encourage the merging of federal orders. Specific provisions of the compact itself set forth this basic principle.

Designed as a flexible mechanism able to adjust to changes in a regulated marketplace, the compact also contains a contingency provision should the federal order system be discontinued. In that event, the interstate commission is authorized to regulate the marketplace in replacement of the order system. This contingent authority does not anticipate such a change, however, and should not be so construed. It is only provided should developments in the market other than establishment of this compact result in discontinuance of the order system.

ARTICLE II. DEFINITIONS AND RULES OF CONSTRUCTION

Sec. 2. DEFINITIONS. For the purposes of this compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

(1) "Class I milk" means milk disposed of in fluid form or as a fluid milk product, subject to further definition in accordance with the principles expressed in Subsection (b) of Section three.

(2) "Commission" means the Southern Dairy Compact Commission established by this compact.

(3) "Commission marketing order" means regulations adopted by the commission pursuant to Sections 9 and 10 of this compact in place of a terminated federal marketing order or state dairy regulation. Such order may apply throughout the region or in any part or parts thereof as defined in the regulations of the commission. Such order may establish minimum prices for any or all classes of milk.

(4) "Compact" means this interstate compact.

(5) "Compact over-order price" means a minimum price required to be paid to producers for Class I milk established by the commission in regulations adopted pursuant to Sections 9 and 10 of this compact, which is above the price established in federal marketing orders or by state farm price regulation in the regulated area. Such price may apply throughout the region or in any part or parts thereof as defined in the regulations of the commission.

(6) "Milk" means the lacteal secretion of cows and includes all skim, butterfat, or other constituents obtained from separation or any other process. The term is used in its broadest sense and may be further defined by the commission for regulatory purposes.

(7) "Partially regulated plant" means a milk plant not located in a regulated area but having Class I distribution within such area. Commission regulations may exempt plants having such distribution or receipts in amounts less than the limits defined therein.

(8) "Participating state" means a state which has become a party to this compact by the enactment of concurring legislation.

(9) "Pool plant" means any milk plant located in a regulated area.

(10) "Region" means the territorial limits of the states which are parties to this compact.

(11) "Regulated area" means any area within the region governed by and defined in regulations establishing a compact over-order price or commission marketing order.

(12) "State dairy regulation" means any state regulation of dairy prices, and associated assessments, whether by statute, marketing order, or otherwise.

Sec. 3. RULES OF CONSTRUCTION. (a) This compact shall not be construed to displace existing federal milk marketing orders or state dairy regulation in the region but to supplement them. In the event some or all federal orders in the region are discontinued, the compact shall be construed to provide the commission the option to replace them with one or more commission marketing orders pursuant to this compact.

(b) This compact shall be construed liberally in order to achieve the purposes and intent enunciated in Section 1. It is the intent of this compact to establish a basic structure by which the commission may achieve those purposes through the application, adaptation, and development of the regulatory techniques historically associated with milk marketing and to afford the commission broad flexibility to devise regulatory mechanisms to achieve the purposes of this compact. In accordance with this intent, the technical terms which are associated with market order regulation and which have acquired commonly understood general meanings are not defined herein, but the commission may further define the terms used in this compact and develop additional concepts and define additional terms as it may find appropriate to achieve its purposes.

ARTICLE III. COMMISSION ESTABLISHED

Sec. 4. COMMISSION ESTABLISHED. There is hereby created a commission to administer the compact, composed of delegations from each state in the region. The commission shall be known as the Southern Dairy Compact Commission. A delegation shall include not less than three nor more than five persons. Each delegation shall include at least one dairy farmer who is engaged in the production of milk at the time of appointment or reappointment, and one consumer representative. Delegation members shall be residents and voters of, and subject to such confirmation process as is provided for in, the appointing state. Delegation members shall serve no more than three consecutive terms with no single term of more than four years and be subject to removal for cause. In all other respects, delegation members shall serve in accordance with the laws of the state represented. The compensation, if any, of the members of a state delegation shall be determined and paid by each state, but their expenses shall be paid by the commission.

Sec. 5. VOTING REQUIREMENTS. All actions taken by the commission, except for the establishment or termination of an over-order price or commission marketing order, and the adoption, amendment, or rescission of the commission's bylaws shall be by majority vote of the delegations present. Each state delegation shall be entitled to one vote in the conduct of the commission's affairs. Establishment or termination of an over-order price or commission marketing order shall require at least a two-thirds vote of the delegations present. The establishment of a regulated area which covers all or part of a participating state shall require also the affirmative vote of that state's delegation. A majority of the delegations from the participating states shall constitute a quorum for the conduct of the commission's business.

Sec. 6. ADMINISTRATION AND MANAGEMENT. (a) The commission shall elect annually from among the members of the participating state delegations a chairperson, a vice-chairperson, and a treasurer. The commission shall appoint an executive director and fix his or her duties and compensation. The executive director shall serve at the pleasure of the commission, and, together with the treasurer, shall be bonded in an amount determined by the commission. The commission may establish through its bylaws an executive committee composed of one member elected by each delegation.

(b) The commission shall adopt bylaws for the conduct of its business by a two-thirds vote and shall have the power by the same vote to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form with the appropriate agency or officer in each of the participating states. The bylaws shall provide for appropriate notice to the delegations of all commission meetings and hearings and of the business to be transacted at such meetings or hearings. Notice also shall be given to other agencies or officers of participating states as provided by the laws of those states.

(c) The commission shall file an annual report with the secretary of agriculture of the United States, and with each of the participating states by submitting copies to the governor, both houses of the legislature, and the head of the state department having responsibilities for agriculture.

(d) In addition to the powers and duties elsewhere prescribed in this compact, the commission shall have the power:

(1) to sue and be sued in any state or federal court;

(2) to have a seal and alter the same at pleasure;

(3) to acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or other similar manner, for its corporate purposes;

(4) to borrow money and to issue notes, to provide for the rights of the holders thereof and to pledge the revenue of the commission as security therefore, subject to the provisions of Section 18 of this compact;

(5) to appoint such officers, agents, and employees as it may deem necessary, prescribe their powers, duties, and qualifications; and

(6) to create and abolish such offices, employments, and positions as it deems necessary for the purposes of the compact and provide for the removal, term, tenure, compensation, fringe benefits, pension, and retirement rights of its officers and employees. The commission may also retain personal services on a contract basis.

Sec. 7. RULEMAKING POWER. In addition to the power to promulgate a compact over-order price or commission marketing orders as provided by this compact, the commission is further empowered to make and enforce such additional rules and regulations as it deems necessary to implement any provisions of this compact, or to effectuate in any other respect the purposes of this compact.

ARTICLE IV. POWERS OF THE COMMISSION

Sec. 8. POWERS TO PROMOTE REGULATORY UNIFORMITY, SIMPLICITY, AND INTERSTATE COOPERATION. The commission is hereby empowered to:

(1) Investigate or provide for investigations or research projects designed to review the existing laws and regulations of the participating states, to consider their administration and costs, to measure their impact on the production and marketing of milk and their effects on the shipment of milk and milk products within the region.

(2) Study and recommend to the participating states joint or cooperative programs for the administration of the dairy marketing laws and regulations and to prepare estimates of cost savings and benefits of such programs.

(3) Encourage the harmonious relationships between the various elements in the industry for the solution of their material problems. Conduct symposia or conferences designed to improve industry relations or a better understanding of problems.

(4) Prepare and release periodic reports on activities and results of the commission's efforts to the participating states.

(5) Review the existing marketing system for milk and milk products and recommend changes in the existing structure for assembly and distribution of milk which may assist, improve, or promote more efficient assembly and distribution of milk.

(6) Investigate costs and charges for producing, hauling, handling, processing, distributing, selling, and for all other services performed with respect to milk.

(7) Examine current economic forces affecting producers, probable trends in production and consumption, the level of dairy farm prices in relation to costs, the financial conditions of dairy farmers, and the need for an emergency order to relieve critical conditions on dairy farms.

Sec. 9. EQUITABLE FARM PRICES. (a) The powers granted in this section and Section 10 shall apply only to the establishment of a compact over-order price, so long as federal milk marketing orders remain in effect in the region. In the event that any or all such orders are terminated, this article shall authorize the commission to establish one or more commission marketing orders, as herein provided, in the region or parts thereof as defined in the order.

(b) A compact over-order price established pursuant to this section shall apply only to Class I milk. Such compact over-order price shall not exceed $1.50 per gallon at Atlanta, Georgia; however, this compact over-order price shall be adjusted upward or downward at other locations in the region to reflect differences in minimum federal order prices. Beginning in 1990, and using that year as a base, the foregoing $1.50 per gallon maximum shall be adjusted annually by the rate of change in the Consumer Price Index as reported by the Bureau of Labor Statistics of the United States Department of Labor. For purposes of the pooling and equalization of an over-order price, the value of milk used in other use classifications shall be calculated at the appropriate class price established pursuant to the applicable federal order or state dairy regulation, and the value of unregulated milk shall be calculated in relation to the nearest prevailing class price in accordance with and subject to such adjustments as the commission may prescribe in regulations.

(c) A commission marketing order shall apply to all classes and uses of milk.

(d) The commission is hereby empowered to establish a compact over-order price for milk to be paid by pool plants and partially regulated plants. The commission is also empowered to establish a compact over-order price to be paid by all other handlers receiving milk from producers located in a regulated area. This price shall be established either as a compact over-order price or by one or more commission marketing orders. Whenever such a price has been established by either type of regulation, the legal obligation to pay such price shall be determined solely by the terms and purpose of the regulation without regard to the situs of the transfer of title, possession, or any other factors not related to the purposes of the regulation and this compact. Producer-handlers as defined in an applicable federal market order shall not be subject to a compact over-order price. The commission shall provide for similar treatment of producer-handlers under commission marketing orders.

(e) In determining the price, the commission shall consider the balance between production and consumption of milk and milk products in the regulated area, the costs of production including, but not limited to, the price of feed, the cost of labor, including the reasonable value of the producer's own labor and management, machinery expense, and interest expense, the prevailing price for milk outside the regulated area, the purchasing power of the public, and the price necessary to yield a reasonable return to the producer and distributor.

(f) When establishing a compact over-order price, the commission shall take such other action as is necessary and feasible to help ensure that the over-order price does not cause or compensate producers so as to generate local production of milk in excess of those quantities necessary to assure consumers of an adequate supply for fluid purposes.

(g) The commission shall whenever possible enter into agreements with state or federal agencies for exchange of information or services for the purpose of reducing regulatory burden and cost of administering the compact. The commission may reimburse other agencies for the reasonable cost of providing these services.

Sec. 10. OPTIONAL PROVISIONS FOR PRICING ORDER. Regulations establishing a compact over-order price or a commission marketing order may contain, but shall not be limited to, any of the following:

(1) provisions classifying milk in accordance with the form in which or purpose for which it is used, or creating a flat pricing program;

(2) with respect to a commission marketing order only, provisions establishing or providing a method for establishing separate minimum prices for each use classification prescribed by the commission, or a single minimum price for milk purchased from producers or associations of producers;

(3) with respect to an over-order minimum price, provisions establishing or providing a method for establishing such minimum price for Class I milk;

(4) provisions for establishing either an over-order price or a commission marketing order may make use of any reasonable method for establishing such price or prices including flat pricing and formula pricing. Provision may also be made for location adjustments, zone differentials, and for competitive credits with respect to regulated handlers who market outside the regulated area;

(5) provisions for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered, or for the payment of producers delivering milk to the same handler of uniform prices for all milk delivered by them;

(A) With respect to regulations establishing a compact over-order price, the commission may establish one equalization pool within the regulated area for the sole purpose of equalizing returns to producers throughout the regulated area.

(B) With respect to any commission marketing order, as defined in Section 2, Subdivision three, which replaces one or more terminated federal orders or state dairy regulation, the marketing area of now separate state or federal orders shall not be merged without the affirmative consent of each state, voting through its delegation, which is partly or wholly included within any such new marketing area.

(6) provisions requiring persons who bring Class I milk into the regulated area to make compensatory payments with respect to all such milk to the extent necessary to equalize the cost of milk purchased by handlers subject to a compact over-order price or commission marketing order. No such provisions shall

discriminate against milk producers outside the regulated area. The provisions for compensatory payments may require payment of the difference between the Class I price required to be paid for such milk in the state of production by a federal milk marketing order or state dairy regulation and the Class I price established by the compact over-order price or commission marketing order;

(7) provisions specially governing the pricing and pooling of milk handled by partially regulated plants;

(8) provisions requiring that the account of any person regulated under the compact over-order price shall be adjusted for any payments made to or received by such persons with respect to a producer settlement fund of any federal or state milk marketing order or other state dairy regulation within the regulated area;

(9) provisions requiring the payment by handlers of an assessment to cover the costs of the administration and enforcement of such order pursuant to Article VII, Section 18(a);

(10) provisions for reimbursement to participants of the Women, Infants and Children Special Supplemental Food Program of the United States Child Nutrition Act of 1966;

(11) other provisions and requirements as the commission may find are necessary or appropriate to effectuate the purposes of this compact and to provide for the payment of fair and equitable minimum prices to producers.

ARTICLE V. RULEMAKING PROCEDURE

Sec. 11. RULEMAKING PROCEDURE. Before promulgation of any regulations establishing a compact over-order price or commission marketing order, including any provision with respect to milk supply under Subsection 9(f), or amendment thereof, as provided in Article IV, the commission shall conduct an informal rulemaking proceeding to provide interested persons with an opportunity to present data and views. Such rulemaking proceeding shall be governed by Section 4 of the federal Administrative Procedure Act, as amended (5 U.S.C. Section 553). In addition, the commission shall, to the extent practicable, publish notice of rulemaking proceedings in the official register of each participating state. Before the initial adoption of regulations establishing a compact over-order price or a commission marketing order and thereafter before any amendment with regard to prices or assessments, the commission shall hold a public hearing. The commission may commence a rulemaking proceeding on its own initiative or may in its sole discretion act upon the petition of any person including individual milk producers, any organization of milk producers or handlers, general farm organizations, consumer or public interest groups, and local, state, or federal officials.

Sec. 12. FINDINGS AND REFERENDUM. In addition to the concise general statement of basis and purpose required by Section 4(b) of the federal Administrative Procedure Act, as amended (5 U.S.C. Section 553 (c)), the commission shall make findings of fact with respect to:

(1) whether the public interest will be served by the establishment of minimum milk prices to dairy farmers under Article IV;

(2) what level of prices that will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes;

(3) whether the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order;

(4) whether the terms of the proposed regional order or amendment are approved by producers as provided in Section 13.

Sec. 13. PRODUCER REFERENDUM. (a) For the purpose of ascertaining whether the issuance or amendment of regulations establishing a compact over-order price or a commission marketing order, including any provision with respect to milk supply under Section 9(f) of this compact, is approved by producers, the commission shall conduct a referendum among producers. The referendum shall be held in a timely manner, as determined by regulation of the commission. The terms and conditions of the proposed order or amendment shall be described by the commission in the ballot used in the conduct of the referendum, but the nature, content, or extent of such description shall not be a basis for attacking the legality of the order or any action relating thereto.

(b) An order or amendment shall be deemed approved by producers if the commission determines that it is approved by at least two-thirds of the voting producers who, during a representative period determined by the commission, have been engaged in the production of milk, the price of which would be regulated under the proposed order or amendment.

(c) For purposes of any referendum, the commission shall consider the approval or disapproval by any cooperative association of producers, qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the Capper-Volstead Act, bona fide engaged in marketing milk, or in rendering services for or advancing the interests of producers of such commodity, as the approval or disapproval of the producers who are members or stockholders in, or under contract with, such cooperative association of producers, except as provided in Subdivision (1) hereof and subject to the provisions of Subdivisions (2) through (5) hereof.

(1) No cooperative which has been formed to act as a common marketing agency for both cooperatives and individual producers shall be qualified to block vote for either.

(2) Any cooperative which is qualified to block vote shall, before submitting its approval or disapproval in any referendum, give prior written notice to each of its members as to whether and how it intends to cast its vote. The notice shall be given in a timely manner as established and in the form prescribed by the commission.

(3) Any producer may obtain a ballot from the commission in order to register approval or disapproval of the proposed order.

(4) A producer who is a member of a cooperative which has provided notice of its intent to approve or not to approve a proposed order, and who obtains a ballot and with such ballot expresses his approval or disapproval of the proposed order, shall notify the commission as to the name of the cooperative of which he or she is a member, and the commission shall remove such producer's name from the list certified by such cooperative with its corporate vote.

(5) In order to ensure that all milk producers are informed regarding a proposed order, the commission shall notify all milk producers that an order is being considered and that each producer may register his approval or disapproval with the commission either directly or through his or her cooperative.

Sec. 14. TERMINATION OF OVER-ORDER PRICE OR MARKETING ORDER. (a) The commission shall terminate any regulations establishing an over-order price or commission marketing order issued under this article whenever it finds that such order or price obstructs or does not tend to effectuate the declared policy of this compact.

(b) The commission shall terminate any regulations establishing an over-order price or a commission marketing order issued under this article whenever it finds that such termination is favored by a majority of the producers who, during a representative period determined by the commission, have been engaged in the production of milk the price of which is regulated by such order; but such termination shall be effective only if announced on or before such date as may be specified in such marketing agreement or order.

(c) The termination or suspension of any order or provision thereof shall not be considered an order within the meaning of this article and shall require no hearing but shall comply with the requirements for informal rulemaking prescribed by Section 4 of the federal Administrative Procedure Act, as amended (5 U.S.C. Section 553).

ARTICLE VI. ENFORCEMENT

Sec. 15. RECORDS, REPORTS, ACCESS TO PREMISES. (a) The commission may by rule and regulation prescribe recordkeeping and reporting requirements for all regulated persons. For purposes of the administration and enforcement of this compact, the commission is authorized to examine the books and records of any regulated person relating to his or her milk business, and for that purpose, the commission's properly designated officers, employees, or agents shall have full access during normal business hours to the premises and records of all regulated persons.

(b) Information furnished to or acquired by commission officers, employees, or its agents pursuant to this section shall be confidential and not subject to disclosure except to the extent that the commission deems disclosure to be necessary in any administrative or judicial proceeding involving the administration or enforcement of this compact, an over-order price, a compact marketing order, or other regulations of the commission. The commission may promulgate regulations further defining the confidentiality of information pursuant to this section. Nothing in this section shall be deemed to prohibit (i) the issuance of general statements based upon the reports of a number of handlers which do not identify the information furnished by any person, or (ii) the publication by direction of the commission of the name of any person violating any regulation of the commission, together with a statement of the particular provisions violated by such person.

(c) No officer, employee, or agent of the commission shall intentionally disclose information, by inference or otherwise, which is made confidential pursuant to this section. Any person violating the provisions of this section shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both, and shall be removed from office. The commission shall refer any allegation of a violation of this section to the appropriate state enforcement authority or the United States Attorney.

Sec. 16. SUBPOENA, HEARINGS, AND JUDICIAL REVIEW. (a) The commission is hereby authorized and empowered by its members and its properly designated officers to administer oaths and issue subpoenas throughout all signatory states to compel the attendance of witnesses and the giving of testimony and the production of other evidence.

(b) Any handler subject to an order may file a written petition with the commission stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the commission. After such hearing, the commission shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(c) The district courts of the United States in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction to review such ruling, provided a complaint for that purpose is filed within 30 days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the commission by delivering to it a copy of the complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the commission with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subsection shall not impede, hinder, or delay the commission from obtaining relief pursuant to Section 17. Any proceedings brought pursuant to Section 17, except where brought by way of counterclaim in proceedings instituted pursuant to this section, shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this section.

Sec. 17. ENFORCEMENT WITH RESPECT TO HANDLERS. (a) Any violation by a handler of the provisions of regulations establishing an over-order price or a commission marketing order, or other regulations adopted pursuant to this compact, shall:

(1) Constitute a violation of the laws of each of the signatory states. Such violation shall render the violator subject to a civil penalty in an amount as may be prescribed by the laws of each of the participating states, recoverable in any state or federal court of competent jurisdiction. Each day such violation continues shall constitute a separate violation.

(2) Constitute grounds for the revocation of a license or permit to engage in the milk business under the applicable laws of the participating states.

(b) With respect to handlers, the commission shall enforce the provisions of this compact, regulations establishing an over-order price, a commission marketing order, or other regulations adopted hereunder by:

(1) commencing an action for legal or equitable relief brought in the name of the commission in any state or federal court of competent jurisdiction; or

(2) referral to the state agency for enforcement by judicial or administrative remedy with the agreement of the appropriate state agency of a participating state.

(c) With respect to handlers, the commission may bring an action for injunction to enforce the provisions of this compact or the order or regulations adopted thereunder without being compelled to allege or prove that an adequate remedy of law does not exist.

ARTICLE VII. FINANCE

Sec. 18. FINANCE OF START-UP AND REGULAR COSTS. (a) To provide for its start-up costs, the commission may borrow money pursuant to its general power under Section 6, Subdivision (d), Paragraph 4. In order to finance the costs of administration and enforcement of this compact, including payback of start-up costs, the commission is hereby empowered to collect an assessment from each handler who purchases milk from producers within the region. If imposed, this assessment shall be collected on a monthly basis for up to one year from the date the commission convenes, in an amount not to exceed $.015 per hundredweight of milk purchased from producers during the period of the assessment. The initial assessment may apply to the projected purchases of handlers for the two-month period following the date the commission convenes. In addition, if regulations establishing an over-order price or

a compact marketing order are adopted, they may include an assessment for the specific purpose of their administration. These regulations shall provide for establishment of a reserve for the commission's ongoing operating expenses.

(b) The commission shall not pledge the credit of any participating state or of the United States. Notes issued by the commission and all other financial obligations incurred by it shall be its sole responsibility and no participating state or the United States shall be liable therefor.

Sec. 19. AUDIT AND ACCOUNTS. (a) The commission shall keep accurate accounts of all receipts and disbursements, which shall be subject to the audit and accounting procedures established under its rules. In addition, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(b) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the participating states and by any persons authorized by the commission.

(c) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any participating state or of the United States.

ARTICLE VIII. ENTRY INTO FORCE;
ADDITIONAL MEMBERS AND WITHDRAWAL

Sec. 20. ENTRY INTO FORCE; ADDITIONAL MEMBERS. The compact shall enter into force effective when enacted into law by any three states of the group of states composed of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia and when the consent of the United States Congress has been obtained.

Sec. 21. WITHDRAWAL FROM COMPACT. Any participating state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after notice in writing of the withdrawal is given to the commission and the governors of all other participating states. No withdrawal shall affect any liability already incurred by or chargeable to a participating state before the time of such withdrawal.

Sec. 22. SEVERABILITY. If any part or provision of this compact is adjudged invalid by any court, such judgment shall be confined in its operation to the part or provision directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this compact. In the event Congress consents to this compact subject to conditions, said conditions shall not impair the validity of this compact when said conditions are accepted by three or more compacting states. A compacting state may accept the conditions of Congress by implementation of this compact.

SECTION __. Section 12.020(c), Agriculture Code, is amended to read as follows:

(c) The provisions of this code subject to this section and the applicable penalty amounts are as follows:

| Provision | Maximum Penalty |
|---|---|
| Chapters 13, 14, 18, 61, 94, 95 101, 102, 103, 121, 125, 132, [~~and~~] 134, and 182 | $500 |

| | |
|---|---|
| Subchapter B, Chapter 71 | |
| Chapter 19 | $2,000 |
| Chapters 75 and 76 | |
| Subchapters A and C, Chapter 71 | |
| Chapters 72, 73, and 74 | $5,000. |

The amendments were read.

Senator Ogden 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 705** 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 Ogden, Chair; Armbrister, Brown, Bivins, and Lucio.

**CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1592 ADOPTED**

Senator Duncan called from the President's table the Conference Committee Report on **HB 1592**. The Conference Committee Report was filed with the Senate on Thursday, May 27, 1999.

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

**CONFERENCE COMMITTEE REPORT ON SENATE BILL 216 ADOPTED**

Senator Duncan called from the President's table the Conference Committee Report on **SB 216**. The Conference Committee Report was filed with the Senate on Tuesday, May 25, 1999.

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

**CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2599 ADOPTED**

Senator Duncan called from the President's table the Conference Committee Report on **HB 2599**. The Conference Committee Report was filed with the Senate on Thursday, May 27, 1999.

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

**CONFERENCE COMMITTEE ON HOUSE BILL 1861**

Senator Shapleigh called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1861** 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 1861** 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 Shapleigh, Chair; Shapiro, Lucio, Madla, and Bivins.

## CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2085 ADOPTED

Senator Brown called from the President's table the Conference Committee Report on **HB 2085**. The Conference Committee Report was filed with the Senate on Wednesday, May 26, 1999.

On motion of Senator Brown, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

## CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1975 ADOPTED

Senator Bivins called from the President's table the Conference Committee Report on **HB 1975**. The Conference Committee Report was filed with the Senate on Tuesday, May 25, 1999.

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

## SENATE BILL 955 WITH HOUSE AMENDMENTS

Senator Bivins called **SB 955** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer, Senator Ratliff in Chair, laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 955** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to pre-reading instruction and the provision of scholarships, bonuses, wage supplementation, and student loan repayment assistance for certain professional child-care workers.

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

SECTION 1. Subchapter E, Chapter 29, Education Code, is amended by adding Section 29.155 to read as follows:

Sec. 29.155. READY TO READ GRANTS. (a) From funds appropriated for the purpose, the commissioner shall make grants as provided by this section in support of pre-reading instruction.

(b) The commissioner shall establish a competitive grant program for distribution of at least 95 percent of the available appropriated funds. Grants shall be

used to provide scientific, research-based pre-reading instruction for the purpose of directly improving pre-reading skills and for identifying cost-effective models for pre-reading intervention. The commissioner shall distribute the grants in amounts not less than $50,000 or more than $150,000 to eligible applicants to be used for:

(1) professional staff development in pre-reading instruction;

(2) pre-reading curriculum and materials;

(3) pre-reading skills assessment materials; and

(4) employment of pre-reading instructors.

(c) A public school operating a prekindergarten program, or an eligible entity as defined by Section 12.101(a) that provides a preschool instruction program and that meets qualifications prescribed by the commissioner, is eligible to apply for a grant if at least 75 percent of the children enrolled in the program are low-income students, as determined by rule of the commissioner.

(d) As a condition to receiving a grant, an applicant must commit public or private funds matching the grant in a percentage set by the commissioner. The commissioner shall determine the required percentage of matching funds based on the demonstrated economic capacity of the community served by the program to raise funds for the purpose of matching the grant, as determined by the commissioner. Matching funds must equal at least 30 percent, but not more than 75 percent, of the amount of the grant.

(e) The commissioner shall develop and implement performance measures for evaluating the effectiveness of grants under this section. Those measures must correlate to other reading diagnostic assessments used in public schools in kindergarten through the second grade.

(f) The commissioner may adopt rules as necessary for the administration of this section.

SECTION 2. Subtitle B, Title 3, Human Resources Code, is amended by adding Chapter 72 to read as follows:

CHAPTER 72. HEAD START PROGRAMS

Sec. 72.001. DEFINITION. In this chapter, "Head Start program" means the federal program established under the Head Start Act (42 U.S.C. Section 9831 et seq.) and its subsequent amendments.

Sec. 72.002. EDUCATIONAL SERVICES. To promote the comprehensive health, safety, and well-being of children receiving child care through Head Start programs, a program provider shall provide educational services to children participating in the program so that each child is prepared to enter school and is ready to learn after completing the program. The educational services provided must include components designed to enable a child to:

(1) develop phonemic, print, and numeracy awareness, including the ability to:

(A) recognize that letters of the alphabet are a special category of visual graphics that can be individually named;

(B) recognize a word as a unit of print;

(C) identify at least 10 letters of the alphabet; and

(D) associate sounds with written words;

(2) understand and use language to communicate for various purposes;

(3) understand and use an increasingly complex and varied vocabulary;

(4) develop and demonstrate an appreciation of books; and

(5) progress toward mastery of the English language, if the child's primary language is a language other than English.

SECTION 3. Subchapter A, Chapter 302, Labor Code, is amended by adding Section 302.006 to read as follows:

Sec. 302.006. PROFESSIONAL CHILD-CARE TRAINING SCHOLARSHIPS, BONUSES, AND WAGE SUPPLEMENTATION. (a) The commission shall develop and administer a program under which the commission awards scholarships in the amount of $1,000 each for professional child-care training to eligible recipients.

(b) A recipient may use a scholarship awarded under this section only to pay expenses associated with obtaining:

(1) Child Development Associate (CDA) national credentials;

(2) Certified Child-Care Professional (CCP) credentials; or

(3) a level one certificate or associate's degree in the area of child development or early childhood education from a public or private institution of higher education.

(c) To be eligible to receive a scholarship awarded under this section, a person must:

(1) be employed in a child-care facility, as defined by Section 42.002, Human Resources Code;

(2) intend to obtain a credential, certificate, or degree specified in Subsection (b);

(3) agree to work in a child-care facility, as defined by Section 42.002, Human Resources Code, for at least 18 additional months; and

(4) satisfy any other requirements adopted by the commission.

(d) A person may not receive more than one scholarship awarded under this section.

(e) In addition, the commission may provide for payment of a bonus or wage supplementation to a scholarship recipient who for 18 months after the date of receiving the scholarship provides care for children younger than six years of age while remaining in the employment of the child-care facility that employed the person when the scholarship was awarded. Any bonus or wage supplementation provided under this subsection shall be paid in equal shares by the scholarship recipient's employer and the commission. The commission shall determine the amount of any bonus and the amount and duration of any wage supplementation provided under this subsection.

(f) The commission shall fund scholarships and any bonuses or wage supplementation provided under this section through federal Child Care Development funds or other funding sources available to the commission. Total funding may not exceed $2 million per state biennium.

(g) The commission shall adopt rules necessary to implement this section. The rules must include provisions that:

(1) address the computation of the 18-month service requirement prescribed by Subsection (c); and

(2) ensure that the commission may recover scholarship money from a recipient who fails to comply with that service requirement or any other requirement imposed by the commission.

SECTION 4. Chapter 61, Education Code, is amended by adding Subchapter T to read as follows:

SUBCHAPTER T. EARLY CHILDHOOD CHILD-CARE WORKER STUDENT LOAN REPAYMENT PROGRAM

Sec. 61.871. DEFINITIONS. In this subchapter:

(1) "Child-care facility" has the meaning assigned by Section 42.002, Human Resources Code.

(2) "Early childhood child-care worker" means a person who works more than 30 hours a week in a child-care facility, whether as an employee, owner, or volunteer, and whose duties consist primarily of providing child care or education to children less than four years of age.

Sec. 61.872. LOAN REPAYMENT ASSISTANCE AUTHORIZED. The board shall provide, in accordance with this subchapter and board rules, assistance in the repayment of eligible student loans for persons who apply and qualify for the assistance.

Sec. 61.873. ELIGIBILITY FOR ASSISTANCE. To be eligible to receive loan repayment assistance under this subchapter, a person must:

(1) hold an associate, baccalaureate, or graduate degree in early childhood development or the equivalent from a public or private institution of higher education accredited by a recognized accrediting agency; and

(2) enter into an agreement to serve as an early childhood child-care worker as provided by Section 61.875.

Sec. 61.874. ELIGIBLE LOANS. (a) A person may receive loan repayment assistance under this subchapter for the repayment of any student loan for education at any public or private institution of higher education through any lender. If the loan is not a state or federal guaranteed student loan, the note or other writing governing the terms of the loan must require the loan proceeds to be used for expenses incurred by a person attending any public or private institution of higher education.

(b) The board may not provide repayment assistance for a student loan that is in default at the time of the person's application.

Sec. 61.875. AGREEMENT; TERMS. (a) To qualify for loan repayment assistance under this subchapter, a person must enter into a written agreement with the board as provided by this subchapter. The agreement must specify the conditions the person must satisfy to receive repayment assistance.

(b) To be eligible for loan repayment assistance, a person must agree to serve at least two years as an early childhood child-care worker in this state. A person may receive loan repayment assistance for additional years of service as specified in the agreement.

(c) The agreement must specify the number of additional years of service for which the person may receive repayment assistance and the period within which the person must complete those years of additional service.

(d) Only service as an early childhood child-care worker after the date the person enters into the agreement may be used to satisfy the service requirement under the agreement.

(e) The person must complete the initial service obligation within three years of the date of the agreement unless the board grants the person additional time to begin fulfilling the initial service obligation. The board shall grant the person additional time to complete the service obligation for good cause.

(f) The board shall cancel a person's service obligation if the board determines that the person:

(1) has become permanently disabled so that the person is not able to work as an early childhood child-care worker; or

(2) has died.

(g) The board shall require a person who receives loan repayment assistance under this subchapter to sign an agreement in the nature of a contract under which the person agrees to perform the required years of service. In the event the person does not fulfill the terms of the agreement, all loan repayment assistance paid on behalf of the person becomes a loan and must be repaid. The agreement must include a promissory note acknowledging the conditional nature of the loan repayment assistance and promising to repay the amount of the loan repayment, applicable interest, and reasonable collection costs if the person does not satisfy the applicable conditions. The board shall determine the terms of the promissory note.

Sec. 61.876. AMOUNT OF REPAYMENT ASSISTANCE; LIMITATIONS. (a) For each year that a qualified person serves as an early childhood child-care worker in this state under an agreement under Section 61.875, the person may receive loan repayment assistance in an amount not to exceed 15 percent of the total amount of the person's outstanding student loans, including scheduled interest payments that would become due if the loan is not prepaid, when the person enters into the agreement. The amount of repayment assistance paid for a year may not exceed the lesser of:

(1) the actual amount of the loan payments the person receiving the assistance is required to make for that year; or

(2) an amount set by the board equal to the maximum amount of resident tuition and required fees paid by a person enrolled as a full-time student at a general academic teaching institution for the most recent academic year, excluding summer sessions.

(b) The board may enter into an agreement to provide loan repayment assistance under Section 61.875 only to the extent money is appropriated or otherwise available to provide the repayment assistance as it becomes payable. If that money will not be sufficient to provide repayment assistance to each eligible applicant, the board shall select persons to receive repayment assistance from the eligible applicants according to financial need or on another basis the board considers reasonable to further the purposes of this subchapter.

(c) The board may determine the manner in which the loan repayment assistance is to be paid and shall include provisions governing the manner of repayment in the agreement. The board may provide for the payment of a portion of the repayment assistance in one or more installments before the person completes a full year of service as an early childhood child-care worker and for the payment of the remainder of the repayment assistance for that year after the completion of the full year of service.

Sec. 61.877. ADMINISTRATION; RULES. (a) The board shall adopt rules necessary for the administration of this subchapter.

(b) The board shall distribute a copy of the rules adopted under this section and pertinent information in this subchapter to each public or private institution of higher education in this state that offers a degree program in early childhood development or an equivalent degree.

Sec. 61.878. FUNDING. The board may solicit and accept gifts, grants, and donations from any public or private source for the purposes of this subchapter.

SECTION 5. To the extent practical, the commissioner of education shall administer the grant program established by Section 29.155, Education Code, as added by this Act, in a manner consistent with other reading programs the commissioner identifies as components of the governor's reading initiative.

SECTION 6. (a) Subchapter T, Chapter 61, Education Code, as added by this Act, takes effect immediately and applies beginning with the 1999 fall semester.

(b) Section 29.155, Education Code, and Section 302.006, Labor Code, as added by this Act, take 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, 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 955**, as follows:

(1) On page 3, line 25, strike SECTIONS 3 and 4.

The amendments were read.

On motion of Senator Bivins, the Senate concurred in the House amendments to **SB 955** by a viva voce vote.

## CONFERENCE COMMITTEE REPORT ON HOUSE BILL 676 ADOPTED

Senator Bivins called from the President's table the Conference Committee Report on **HB 676**. The Conference Committee Report was filed with the Senate on Wednesday, May 26, 1999.

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

## SENATE RESOLUTION 1181

Senator Sibley 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 560**, relating to the regulation of telecommunications utilities by the Public Utility Commission of Texas and the provision of telecommunications services, to consider and take action on the following matters:

(1) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add additional text not included in either the house or senate version of the bill, in Section 5 of the bill, in amended Section 51.002, Utilities Code, so that Section 5 reads as follows:

SECTION 5. Sections 51.002(6), (7), 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.

(7) "Pricing flexibility" includes:

(A) customer specific contracts;

(B) packaging of services;

(C) volume, term, and discount pricing;

(D) zone density pricing, with a zone to be defined as an exchange; and

(E) other promotional pricing.

(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.

Explanation: This change is needed to specify provisions for zone density pricing.

(2) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add additional text not included in either the house or senate version of the bill, to read as follows:

SECTION 34. Subchapter A, Chapter 58, Utilities Code, is amended by adding Section 58.004 to read as follows:

Sec. 58.004. PACKAGING, TERM AND VOLUME DISCOUNTS, AND PROMOTIONAL OFFERINGS. (a) Notwithstanding any other provision of this chapter, an electing company that has more than five million access lines in this state may not offer in an exchange a service listed in Sections 58.151(1)-(4) as a component of a package of services or as a promotional offering until the company makes the reduction in switched access service rates required by Section 58.301(2) unless the customer of one of the pricing flexibility offerings described in this subsection is a federal, state, or local governmental entity.

(b) Notwithstanding any other provision of this chapter, an electing company that has more than five million access lines in this state may not offer a volume or term discount on any service listed in Sections 58.151(1)-(4) until September 1, 2000, unless the customer of one of the pricing flexibility offerings described in this subsection is a federal, state, or local governmental entity.

(c) Notwithstanding any other provision of this chapter, an electing company that has more than five million access lines in this state may offer in an exchange a service listed in Sections 58.051(a)(1)-(4) as a component of a package of services, as a promotional offering, or with a volume or term discount on and after September 1, 1999.

Explanation: This change is necessary to provide restrictions on offering certain nonbasic services as a component of a package of services, as a promotional offering, or with a volume or term discount.

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

Absent-excused: Luna.

## GUESTS PRESENTED

Senator Duncan was recognized and introduced to the Senate members of the select baseball team "The Thunder" from Lubbock, accompanied by their coaches.

The Senate welcomed its guests.

## SENATE BILL 1896 WITH HOUSE AMENDMENT

Senator Jackson called **SB 1896** 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 1896** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the sale of real property by counties.

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

SECTION 1. Section 263.008, Local Government Code, is amended to read as follows:

Sec. 263.008. REAL ESTATE BROKER [~~REALTOR~~] AGREEMENTS AND FEES FOR THE SALE OF REAL PROPERTY. (a) In this section, "real estate broker" means a person licensed as a real estate broker under The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes).

(b) The commissioners court of a county may contract with a real estate broker [~~person licensed under The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes)~~] to sell a tract of real property that is owned by the county.

(c) [~~(b)~~] The commissioners court of a county may pay a fee if a real estate broker [~~person licensed under The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes)~~] produces a ready, willing, and able buyer to purchase a tract of real property [~~that is owned by the county~~].

(d) If a contract made under Subsection (b) requires a real estate broker to list the tract of real property for sale for at least 30 days with a multiple-listing service used by other real estate brokers in the county, the commissioners court on or after the 30th day after the date the property is listed may sell the tract of real property to a ready, willing, and able buyer who is produced by any real estate broker using the multiple-listing service and who submits the highest cash offer.

(e) The commissioners court may sell a tract of real property under this section without complying with the requirements for conducting a public auction, including the requirements prescribed by Section 263.001.

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 Jackson moved to concur in the House amendment to **SB 1896**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE ON HOUSE BILL 1884**

Senator Brown, on behalf of 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 1884** 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 1884** 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, Madla, Brown, and Wentworth.

**CONFERENCE COMMITTEE ON HOUSE BILL 2510**

Senator Shapleigh called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2510** 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 2510** 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 Shapleigh, Chair; Brown, Bernsen, Sibley, and West.

**CONFERENCE COMMITTEE REPORT ON SENATE BILL 1207 ADOPTED**

Senator Cain called from the President's table the Conference Committee Report on **SB 1207**. The Conference Committee Report was filed with the Senate on Wednesday, May 26, 1999.

On motion of Senator Cain, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

## SENATE BILL 1595 WITH HOUSE AMENDMENT

Senator Brown called **SB 1595** from the President's table for consideration of the House amendment to the bill.

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

**Floor Amendment No. 1**

Amend **SB 1595** by striking Sections 9 and 10 of the bill and substituting the following:

SECTION 9. 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 Brown moved to concur in the House amendment to **SB 1595**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

## CONFERENCE COMMITTEE REPORT ON SENATE BILL 287 ADOPTED

Senator Brown called from the President's table the Conference Committee Report on **SB 287**. The Conference Committee Report was filed with the Senate on Wednesday, May 26, 1999.

On motion of Senator Brown, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**(Senator Brown in Chair)**

## CONFERENCE COMMITTEE REPORT ON SENATE BILL 177 ADOPTED

Senator Ratliff called from the President's table the Conference Committee Report on **SB 177**. The Conference Committee Report was filed with the Senate on Thursday, May 27, 1999.

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

## CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1945 ADOPTED

Senator Ratliff called from the President's table the Conference Committee Report on **HB 1945**. 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 the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

## CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1676 ADOPTED

Senator Ratliff called from the President's table the Conference Committee Report on **HB 1676**. 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.

## MOTION TO RECESS

On motion of Senator Carona, the Senate at 11:33 a.m. agreed to recess, upon receipt of Messages from the House, until 1:00 p.m. today.

## MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
May 29, 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 GRANTED THE REQUEST OF THE SENATE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

**SB 50**
House Conferees: Naishtat - Chair/Dukes/King, Phil/Pickett/Reyna, Arthur

**SB 86**
House Conferees: Danburg - Chair/Brimer/Hunter/Merritt/Turner, Sylvester

**SB 528**
House Conferees: Giddings - Chair/Dutton/Garcia/Haggerty/Hinojosa

**SB 558**
House Conferees: Garcia - Chair/Chavez/Christian/Naishtat/Talton

**SB 655**
House Conferees: Uresti - Chair/Chavez/Hunter/Jones, Charles/Solis, Juan

**SB 694**
House Conferees: Solis, Jim - Chair/Capelo/King, Tracy/Thompson/Uresti

**SB 766**
House Conferees: Allen - Chair/Chisum/Gallego/Maxey/Zbranek

**SB 947**
House Conferees: Maxey - Chair/Brown, Fred/Farabee/Rangel/Wohlgemuth

**SB 982**
House Conferees: Van de Putte - Chair/Burnam/Eiland/Smithee/Thompson

**SB 996**
House Conferees: Coleman - Chair/Davis, John/Naishtat/Noriega/Truitt

**SB 1438**
House Conferees: Wilson - Chair/Gutierrez/McReynolds/Pickett/Pitts

**SB 1520**
House Conferees: Elkins - Chair/Averitt/Marchant/Pitts/Solomons

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

## RECESS

Pursuant to a previously adopted motion, the Senate at 12:11 p.m. recessed until 1:00 p.m. today.

## AFTER RECESS

The Senate met at 1:00 p.m. and was called to order by Senator Ratliff.

## CONFERENCE COMMITTEE ON HOUSE BILL 3457

Senator Armbrister called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3457** 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 3457** 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 Armbrister, Chair; Whitmire, Jackson, Nelson, and West.

## SENATE BILL 1563 WITH HOUSE AMENDMENT

Senator Armbrister called **SB 1563** 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 1563** as follows:

1. In SECTION 1 of the bill, in new Section 2113.002(b), Government Code, (House Committee Report, page 1, line 17), between "groups" and "regarding", insert "or other appropriate methods approved by the Governor's Office of Budget and Planning and the Legislative Budget Board."

2. In SECTION 1 of the bill, in new Section 2113.002(b), Government Code, (House Committee Report, page 1, line 19), strike "must" and insert "shall be as specified by the Governor's Office of Budget and Planning and the Legislative Budget Board and may . . .

3. In SECTION 1 of the bill, in new Section 2113.006(c), Government Code, (House Committee Report, page 4, line 1), between "Planning" and the ".", insert "and Legislative Budget Board".

4. In SECTION 1 of the bill, (House Committee Report, page 4, between lines 9 and 10), insert new subsection (d) to read as follows:

(d) Each agency that maintains a web site shall publish its Compact With Texans on that web site.

5. In SECTION 1 of the bill (House Committee Report, page between lines 9 and 10), insert the following new Section 2113.007:

Sec. 2113.007. RULEMAKING AUTHORITY. (a) The Governor's Office of Budget and Planning may adopt rules to implement this Chapter.

(b) In developing the rules the Office shall consult with and consider the comments of the Legislative Budget Board.

6. In SECTION 2(b) of the bill, (House Committee Report, page 4 line 17), between "a" and "report" insert "two volume".

7. In SECTION 2(c) of the bill, (House Committee Report, page 4, lines 21-25) strike subdivisions (1) and (2) and substitute the following:

"(1) a compilation of each agency's customer service performance standards; and

(2) an analysis of agencies' customer service performance standards and recommendations for improving customer service and customer service standards by state agencies."

The amendment was read.

On motion of Senator Armbrister, the Senate concurred in the House amendment to **SB 1563** by a viva voce vote.

## CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2960 ADOPTED

Senator Armbrister called from the President's table the Conference Committee Report on **HB 2960**. The Conference Committee Report was filed with the Senate on Wednesday, May 26, 1999.

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

## SENATE BILL 1130 WITH HOUSE AMENDMENT

Senator Armbrister called **SB 1130** 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 1130** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to programs and systems administered by the Employees Retirement System of Texas.

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

SECTION 1. Section 803.402, Government Code, is amended to read as follows:

Sec. 803.402. RECORDS. Except as provided by Section 825.507, records of members and beneficiaries of a retirement system to which this chapter applies that are in the custody of any retirement [~~the~~] system to which this chapter applies are [~~considered to be personnel records and~~] confidential and not subject to disclosure and are exempt from the public access provisions of [~~information under~~] Chapter 552. The records or information in the records may be transferred between retirement systems to which this chapter applies to the extent necessary to administer the proportionate retirement program provided by this chapter.

SECTION 2. Section 805.008, Government Code, is amended by amending Subsection (c) and adding Subsection (h) to read as follows:

(c) As an alternative to Subsections (a) and (b) and except as provided by Subsection (h), the systems by rule may require the system from which service credit is transferred to pay monthly an amount equal to the portion of the actual value of the monthly payment of the annuity that represents the percentage of the total amount of service credit that is transferred.

(h) If a person elects to receive a partial lump-sum payment under the law governing the system from which the person is retiring, a transfer of an amount equal to the portion of the actual value of a lump-sum payment that represents the percentage of the amount of service credit transferred shall be made at the time the lump-sum payment is made.

SECTION 3. Section 811.001, Government Code, is amended by amending Subdivision (8) and adding Subdivision (18) to read as follows:

(8) "Custodial officer" means a member of the retirement system who is employed by the Board of Pardons and Paroles or the Texas Department of Criminal Justice as a parole officer or caseworker or who is employed by the institutional division or the state jail division of the Texas Department of Criminal Justice and certified by the department as having a normal job assignment that requires frequent or infrequent regularly planned contact with, and in close proximity to, inmates of the institutional division or inmates or defendants confined in the state jail division without the protection of bars, doors, security screens, or similar devices and includes assignments normally involving supervision or the potential for supervision of inmates in inmate housing areas, educational or recreational facilities, industrial shops, kitchens, laundries, medical areas, agricultural shops or fields, or in other areas on or away from property of the institutional division or the state jail division. The term includes a member who transfers from the Texas Department of Criminal Justice to the managed health care unit of The University of Texas Medical Branch or the Texas Tech University Health Sciences Center pursuant to Section 9.01, Chapter 238, Acts of the 73rd Legislature, 1993, elects at the time of transfer to retain membership in the retirement system, and is certified by the managed health care unit or the health sciences center as having a normal job assignment described by this subdivision.

(18) "Parole officer" has the meaning assigned by Section 508.001.

SECTION 4. Subsection (a), Section 812.101, Government Code, is amended to read as follows:

(a) A member of the retirement system may withdraw all of the member's accumulated contributions for service credited in the employee class of membership if:

(1) the member does not hold a position included in that class;

(2) the member does not assume or resume, during the 30 days after the date on [~~calendar month following the month in~~] which the member terminates employment, a position included in that class; and

(3) the member's application for withdrawal is filed before the member assumes or resumes a position included in that class.

SECTION 5. Section 812.104, Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as provided by Subsection (c), deposits [~~Deposits~~] representing interest or membership fees that are required of a member to establish service credit under Section 813.202, 813.302, 813.402, or 813.502 are not refundable.

(c) At the time a service retirement, disability retirement, or death benefit annuity becomes payable, the retirement system shall refund any contributions, interest, or membership fees used to establish service credit that is not used in computing the amount of the annuity.

SECTION 6. Subsection (b), Section 813.102, Government Code, is amended to read as follows:

(b) A member may reestablish credit by depositing with the retirement system in a lump sum the amount withdrawn from a membership class, [~~plus all membership fees due,~~] plus interest computed on the basis of the state fiscal year at an annual rate of five percent from the date of withdrawal to the date of redeposit.

SECTION 7. Subsection (b), Section 813.104, Government Code, is amended to read as follows:

(b) Except as provided by Subsection (c), payments may not be made under a rule adopted under this section:

(1) to establish or reestablish service credit of a person who is currently [~~has~~] retired or has died; or

(2) to establish current service under Section 813.201.

SECTION 8. Subsection (b), Section 813.201, Government Code, is amended to read as follows:

(b) A member may not, after August 31, 1997 [~~1991~~], accrue or establish [~~a total of more than 50 years of~~] service credit in the employee class of membership when the total amount of service credit, multiplied by the percentage in effect for computing annuities under Section 814.105, would exceed the number 100. When the maximum amount [~~a total of 50 years~~] of service credit is accrued or established by a member in the employee class, member and state contributions cease, although the member retains membership subject to Section 812.005.

SECTION 9. Subsection (b), Section 813.202, Government Code, is amended to read as follows:

(b) A member may establish credit under this section by depositing with the retirement system in a lump sum a contribution computed as provided by Section 813.404 or 813.505, [~~plus all membership fees due,~~] plus interest computed on the basis of the state fiscal year at an annual rate of 10 percent from the date the service was performed to the date of deposit.

SECTION 10. Subsection (b), Section 813.402, Government Code, is amended to read as follows:

(b) A member may establish credit under this section by depositing with the retirement system in a lump sum a contribution computed as provided by Section 813.404, [~~plus all membership fees due,~~] plus interest computed at an annual rate of 10 percent from the fiscal year in which the service was performed to the date of deposit.

SECTION 11. Subsections (b) and (c), Section 813.506, Government Code, are amended to read as follows:

(b) To be creditable as custodial officer service, service performed must be performed as a parole officer or caseworker or must meet the requirements of the rules adopted under Subsection (a) and [~~may~~] be performed by persons in one of the following job categories:

(1) all persons classified as Correctional Officer I through warden, including training officers and special operations reaction team officers;

(2) all other employees assigned to work on a unit and whose jobs require routine contact with inmates or defendants confined in the state jail division, including but not limited to farm managers, livestock supervisors, maintenance foremen, shop foremen, medical assistants, food service supervisors, stewards, education consultants, commodity specialists, and correctional counselors;

(3) employees assigned to administrative offices whose jobs require routine contact with inmates or defendants confined in the state jail division at least 50 percent of the time, including but not limited to investigators, compliance monitors, accountants routinely required to audit unit operations, sociologists, interviewers, classification officers, and supervising counselors; and

(4) administrative positions whose jobs require response to emergency situations involving inmates or defendants confined in the state jail division, including but except as specified not limited to the director, deputy directors, assistant directors, and not more than 25 administrative duty officers.

(c) The Texas Department of Criminal Justice, the managed health care unit of The University of Texas Medical Branch[~~,~~] or the Texas Tech University Health Sciences Center, or the Board of Pardons and Paroles, as applicable, shall determine a person's eligibility to receive credit as a custodial officer. A determination of the department, [~~or~~] unit, or board may not be appealed by an employee but is subject to change by the retirement system.

SECTION 12. Subchapter F, Chapter 813, Government Code, is amended by adding Section 813.511 to read as follows:

Sec. 813.511. CREDIT FOR ACCUMULATED ANNUAL LEAVE. (a) A member who holds a position included in the employee class of membership during the month that includes the effective date of the member's retirement and who retires based on service or a disability is entitled to service credit in the retirement system for the member's annual leave that has accumulated and is unused on the last day of employment. Annual leave is creditable in the retirement system at the rate of one month of service credit for each 20 days, or 160 hours, of accumulated annual leave and one month for each fraction of days or hours remaining after division of the total hours of accumulated annual leave by 160.

(b) A member who holds a position included in the employee class may use annual leave creditable under this section to satisfy service requirements for retirement under Section 814.104 or 814.107 if the annual leave attributed to the eligibility requirements remains otherwise unused on the last day of employment.

(c) Except as provided by Subsection (d), the disbursing officer of each department or agency shall, before the 11th day after the effective date of retirement of one or more employees of the department or agency, certify to the retirement system:

(1) the name of each person whose retirement from the department or agency, and from state service, became effective during the preceding month; and

(2) the amount of the person's accumulated annual leave on the last day of employment.

(d) The disbursing officer of a department or agency that employs a member who applies for retirement under Subsection (b) shall, not more than 90 or less than 30 days before the effective date of the member's retirement, certify to the retirement system the amount of the member's accumulated and unused annual leave. The officer shall immediately notify the retirement system if the member uses annual leave after the date of certification.

(e) On receipt of a certification under Subsection (c) or (d), the retirement system shall grant any credit to which a retiring member or retiree who is a subject of the certification is entitled. An increase in the computation of an annuity because of credit provided by this section after a certification under Subsection (d) begins with the first payment that becomes due after certification.

(f) The retirement system shall cancel the retirement of a person who used annual leave creditable under this section to qualify for service retirement if the annual leave is otherwise used by the person before the effective date of retirement.

SECTION 13. Section 814.104, Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as provided by Section 814.102 or by rule adopted under Section 813.304(d) or 803.202(a)(2) [~~803.202(2)~~], a member who has service credit in the retirement system is eligible to retire and receive a service retirement annuity if the member:

(1) [~~if the member~~] is at least 60 years old and has at least 5 years of service credit in the employee class; or

(2) has at least 5 years of service credit in the employee class and [~~if~~] the sum of the member's age and amount of service credit in the employee class, including months of age and credit, equals or exceeds the number 80.

(c) For the sole purpose of determining eligibility to receive a service retirement annuity, the retirement system shall consider service performed as a participant in the optional retirement program under Chapter 830 as if it were service for which credit is established in the retirement system.

SECTION 14. Section 814.1041, Government Code, is amended to read as follows:

Sec. 814.1041. TEMPORARY SERVICE RETIREMENT OPTION FOR MEMBERS AFFECTED BY PRIVATIZATION OR OTHER REDUCTION IN WORKFORCE. (a) This section applies only to members of the employee class who are not otherwise eligible to retire and whose positions with the Texas Workforce Commission, the Texas Department of Human Services, [~~or~~] the Texas Department of Mental Health and Mental Retardation, or the Texas Department of Health are eliminated as a result of contracts with private service providers or other reductions in services provided by those agencies and who separate from state service at that time.

(b) A member described by Subsection (a) is eligible to retire and receive a service retirement annuity if the member's age and service credit, each equally

increased only as needed to meet minimum age and service requirements, but not by more than [~~by~~] three years, would meet the minimum age and service requirements for service retirement under Section 814.104(a) at the time the member separates from state service as described by Subsection (a). The annuity of a person who retires under this subsection is computed on the person's accrued service credit increased by the minimum amount of service credit necessary to meet the service credit requirement for retirement, but not by more than three years.

(c) [~~A member described by Subsection (a) becomes eligible to retire and receive a service retirement annuity on the date on which the member would have met the age and service requirements for service retirement under Section 814.104(a) had the member remained employed by the state if, on the date of separation from state service, the member's age and service credit, each increased by five years, would meet age and service requirements for service retirement under Section 814.104(a). The annuity of a person who retires under this subsection is computed on the person's accrued service credit.~~

[~~(d) If a member described by Subsection (c) is reemployed by the state before retirement, the time between the member's separation from state service and reemployment may be used only to compute eligibility for service retirement and may not be used to compute the amount of any service retirement annuity.~~

[~~(e)~~] A member who applies to retire under this section and the state agency from which the member separated from service shall provide documentation required by the retirement system to establish eligibility to retire under this section.

(d) [~~(f)~~] This section applies only to positions eliminated by privatization or other reductions in workforce before September 1, 2001 [~~1999~~].

SECTION 15. Subchapter B, Chapter 814, Government Code, is amended by adding Section 814.1042 to read as follows:

Sec. 814.1042. SERVICE FOR CERTAIN GOVERNMENTAL EMPLOYERS. (a) For the sole purpose of determining eligibility to receive a service retirement annuity under Section 814.104(a)(2), the retirement system shall consider not more than 60 months, or portions of months, of service performed for a Texas governmental employer by a member who has at least five years of service credit, excluding military service, in the employee class as if it were service for which credit is established in the retirement system.

(b) A member who seeks the application of this section must provide documentation satisfactory to the retirement system of the amount of service performed for the governmental employer.

(c) Service described by this section may not be used in determining eligibility for participation in the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code).

SECTION 16. Subsections (c), (d), and (e), Section 814.107, Government Code, are amended to read as follows:

(c) The standard combined service retirement annuity that is payable under this section is based on retirement on or after the attainment of the normal retirement age, which for purposes of this section is the earlier of either the age of 50 or the age at which the sum of the member's age and amount of service credit in the employee class equals the number 80 [~~at the age of 50 or older~~]. A law enforcement or custodial officer who retires before attaining the normal retirement age [~~of 50~~] is entitled to an annuity that is actuarially reduced from the annuity available at the normal retirement age [~~of 50~~] to the law enforcement or custodial officer service credit annuity amount

available at the sum of the member's age and amount of employee class service credit. The annuity [~~earlier retirement age and~~] is payable from the law enforcement and custodial officer supplemental retirement fund.

(d) A member who retires under this section retires simultaneously from the employee class of membership. Benefits for service in the employee class of membership become payable from the trust fund established by Section 815.310 at the normal retirement age [~~of 50~~] under the computation provided by Section 814.105. Optional retirement annuities provided by Section 814.108 are available to a member eligible to receive a service retirement annuity under this section, but the same optional plan and designee must be selected for the portion of the annuity payable from the law enforcement and custodial officer supplemental retirement fund and the portion payable from the trust fund established by Section 815.310.

(e) The amount payable from the law enforcement and custodial officer supplemental retirement fund is reducible by the amount paid from the trust fund established by Section 815.310 for service as a law enforcement or custodial officer. The total combined amount of an annuity under this section may not be less than the authorized benefit under Subsection (b) subtracted by any amount necessary because of selection of an optional annuity, because of retirement before the normal retirement age [~~of 50~~], or as provided by Subsection (f).

SECTION 17. Subchapter B, Chapter 814, Government Code, is amended by adding Section 814.1082 to read as follows:

Sec. 814.1082. PARTIAL LUMP-SUM OPTION. (a) A member who is eligible for an unreduced service retirement annuity may select a standard retirement annuity or an optional retirement annuity described by Section 814.108 together with a partial lump-sum distribution.

(b) The amount of the lump-sum distribution under this section may not exceed the sum of 36 months of a standard service retirement annuity computed without regard to this section.

(c) The service retirement annuity selected by the member shall be actuarially reduced to reflect the lump-sum option selected by the member and shall be actuarially equivalent to a standard or optional service retirement annuity, as applicable, without the partial lump-sum distribution. The annuity and lump sum shall be computed to result in no actuarial loss to the retirement system.

(d) Unless otherwise specified in rules adopted by the board of trustees, the lump-sum distribution will be made as a single payment payable at the time that the first monthly annuity payment is paid to the retiree.

(e) The amount of the lump-sum distribution will be deducted from any amount otherwise payable under Section 814.505.

(f) The partial lump-sum option under this section may be elected only once by a member and may not be elected by a retiree. A member retiring under the proportionate retirement program under Chapter 803 is not eligible for the partial lump-sum option.

(g) Before a retiring member selects a partial lump-sum distribution under this section, the retirement system shall provide a written notice to the member of the amount by which the member's annuity will be reduced because of the selection. The member shall be asked to sign a copy of or a receipt for the notice, and the retirement system shall maintain the signed copy or receipt.

(h) The board of trustees may adopt rules for the implementation of this section and may authorize the option to be used for a death benefit annuity. This section does not apply to a disability retirement annuity.

SECTION 18. Section 814.202, Government Code, is amended by adding Subsection (d) to read as follows:

(d) For the sole purpose of determining eligibility to receive a disability retirement annuity under Subsection (a)(3), the retirement system shall consider service performed as a participant in the optional retirement program under Chapter 830 as if it were service for which credit is established in the retirement system.

SECTION 19. Subsection (b), Section 814.302, Government Code, is amended to read as follows:

(b) If a person dies who, at the time of death, was a contributing member of a retirement program administered by the board of trustees and was eligible, having met the requirements of service credit and attained age, for a service retirement annuity based on service in one or more board-administered programs or was a contributing member of the employee class, had at least three years of service credit in that class, and would have been eligible to retire under the proportionate retirement program under Chapter 803, but was not eligible to select a death benefit plan, the person's surviving spouse may select a plan in the same manner that the decedent could have made the selection if the decedent had retired on the last day of the month in which the person died. If there is no surviving spouse, the guardian of the decedent's surviving minor children may select a plan. If the decedent is not survived by a spouse or minor children, an annuity may not be paid under this subsection.

SECTION 20. Section 815.103, Government Code, is amended by adding Subsection (d) to read as follows:

(d) The board of trustees may accept on behalf of the retirement system gifts of money or other property from any public or private source.

SECTION 21. Subsection (e), Section 815.110, Government Code, is amended to read as follows:

(e) The board of trustees [~~annually~~] shall select an independent auditor to perform an annual [~~a~~] financial audit of the retirement system. The selection shall be in accordance with the requirements of Chapter 2254 for obtaining the services of a certified public accountant [~~made under a competitive bidding process in which the state auditor is eligible to bid~~].

SECTION 22. Subsection (f), Section 815.202, Government Code, is amended to read as follows:

(f) The board of trustees may specifically delegate any right, power, or duty imposed or conferred on the executive director by law to another employee of the retirement system. If not so specifically delegated, the executive director may delegate to another employee of the retirement system any right, power, or duty assigned to the executive director.

SECTION 23. Section 815.208, Government Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) The board of trustees may compensate employees of the retirement system, whether subject to or exempt from the overtime provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), at the rate equal to the employees' regular rate of pay for work performed on a legal holiday or for other compensatory time accrued, when taking compensatory time off would be disruptive to the system's normal business functions.

(e) The retirement system is exempt from Subchapter K, Chapter 659, and Chapter 660, to the extent the board of trustees determines an exemption is necessary for the performance of fiduciary duties.

SECTION 24. Section 815.301, Government Code, is amended by adding Subsection (f) to read as follows:

(f) For purposes of the investment authority of the board of trustees under Section 67, Article XVI, Texas Constitution, "securities" means any investment instrument within the meaning of the term as defined by Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes), 15 U.S.C. Section 77b(a)(1), or 15 U.S.C. Section 78c(a)(10).

SECTION 25. Section 815.322, Government Code, is amended to read as follows:

Sec. 815.322. TRANSFER OF ASSETS TO ADJUST AMOUNT IN RETIREMENT ANNUITY RESERVE ACCOUNT. After making the transfers required by Section 815.318, the executive director [~~board of trustees~~] shall make a transfer to make the amount in the retirement annuity reserve account equal, as of the last day of each fiscal year, to the actuarial present value of the annuities for which a transfer of assets has been made as required by Section 815.319. The transfer shall be:

(1) a transfer from the retirement annuity reserve account to the state accumulation account of the amount by which the amount in the retirement annuity reserve account exceeds the actuarial present value of the annuities; or

(2) a transfer from the state accumulation account to the retirement annuity reserve account of the amount by which the actuarial present value of the annuities exceeds the amount in the retirement annuity reserve account.

SECTION 26. Subsection (a), Section 815.502, Government Code, is amended to read as follows:

(a) If a valid application for payment based on money or credit in a member's individual account in the employees saving account is not filed with the retirement system before the expiration of five years after the last day of the most recent month of service for which the member has credit in the retirement system, the retirement system may [~~shall~~] mail a notice to the member at the member's most recent address as shown on system records. If no address is available or if the notice is returned unclaimed, the retirement system shall cause a notice to be published in a newspaper of general circulation in the state.

SECTION 27. Section 815.503, Government Code, is amended to read as follows:

Sec. 815.503. [~~MEMBERS'~~] RECORDS. (a) Records of members and annuitants [~~beneficiaries~~] under retirement plans administered by the retirement system that are in the custody of the system or of an administrator, carrier, or other governmental agency acting in cooperation with or on behalf of the retirement system are [~~considered to be personnel records and are required to be treated as~~] confidential and not subject to public disclosure and are exempt from the public access provisions of Chapter 552, except as otherwise provided by this section [~~information under Section 552.101~~].

(b) Records may be released to a member or annuitant or to an authorized attorney, family member, or representative acting on behalf of the member or annuitant. The retirement system may release the records to an administrator, carrier, or agent or attorney acting on behalf of the retirement system, to another governmental entity having a legitimate need for the information to perform the purposes of the retirement system, or to a party in response to a subpoena issued under applicable law.

(c) The records of a member or annuitant remain confidential after release to a person as authorized by this section. The records of a member or annuitant may

become part of the public record of an administrative or judicial proceeding related to a contested case under Subtitle D or E or this subtitle, unless the records are closed to public access by a protective order issued under applicable law.

SECTION 28. Section 815.505, Government Code, is amended to read as follows:

Sec. 815.505. CERTIFICATION OF NAMES OF LAW ENFORCEMENT AND CUSTODIAL OFFICERS. Not later than the 12th day of the month following the month in which a person begins or ceases employment as a law enforcement officer or custodial officer, the Public Safety Commission, the Texas Alcoholic Beverage Commission, the Parks and Wildlife Commission, the State Board of Pharmacy, the Board of Pardons and Paroles, or the Texas Board of Criminal Justice, as applicable, shall certify to the retirement system, in the manner prescribed by the system, the name of the employee and such other information as the system determines is necessary for the crediting of service and financing of benefits under this subtitle.

SECTION 29. Section 815.511, Government Code, is amended to read as follows:

Sec. 815.511. [~~APPEAL OF~~] ADMINISTRATIVE DECISION; APPEAL AND NEGOTIATION. (a) The board of trustees may modify or delete a proposed finding of fact or conclusion of law contained in a proposal for decision submitted by an administrative law judge or other hearing examiner, or make alternative findings of fact and conclusions of law, in a proceeding considered to be a contested case under Chapter 2001. The board of trustees shall state in writing the specific reason for its determination and may adopt rules for the implementation of this subsection.

(b) A person aggrieved by a decision of any retirement system administered by the board of trustees denying or limiting membership, service credit, or eligibility for or the amount of benefits payable by a system may appeal the decision to the board. The appeal is considered to be an appeal of a contested case under the administrative procedure law, Chapter 2001. On judicial appeal the standard of review is by substantial evidence.

(c) Notwithstanding Subsection (b), the retirement system and a person aggrieved by a decision of the system may at any time informally negotiate an award of benefits. Negotiated benefits may not exceed the maximum benefits otherwise available or required by law.

(d) On behalf of the retirement system, the executive director may refer an appeal made under Subsection (b) to the State Office of Administrative Hearings for a hearing or, notwithstanding Section 2003.021 or other law, employ or contract for the services of an administrative law judge or hearing examiner not affiliated with the State Office of Administrative Hearings to conduct the hearing.

SECTION 30. Section 840.102, Government Code, is amended by amending Subsection (a) and adding Subsection (g) to read as follows:

(a) Except as provided by Subsection (g), each [~~Each~~] payroll period, a judicial officer who is a member of the retirement system is required to contribute six percent of the officer's state compensation for the period to the retirement system.

(g) A member who accrues 20 years of service credit in the retirement system ceases making contributions under this section but is considered a contributing member for all other purposes under this subtitle.

SECTION 31. Subsection (b), Section 840.103, Government Code, is amended to read as follows:

(b) Not later than December 31 [~~Before November 2~~] of each even-numbered year, the retirement system shall certify to the Legislative Budget Board and to the budget division of the governor's office for review:

(1) an actuarial valuation of the retirement system to determine the percentage of annual payroll required from the state to finance fully the retirement system as provided by Section 840.106;

(2) an estimate of the amount necessary to pay the state's contribution under Subdivision (1) for the following biennium; and

(3) as a separate item, an estimate of the amount, in addition to anticipated receipts from membership fees, required to administer the retirement system for the following biennium.

SECTION 32. Section 840.301, Government Code, is amended by adding Subsection (c) to read as follows:

(c) For purposes of the investment authority of the board of trustees under Section 67, Article XVI, Texas Constitution, "securities" means any investment instrument within the meaning of the term as defined by Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes), 15 U.S.C. Section 77b(a)(1), or 15 U.S.C. Section 78c(a)(10).

SECTION 33. Section 840.402, Government Code, is amended to read as follows:

Sec. 840.402. RETIREMENT SYSTEM RECORDS. Records of members and annuitants [~~beneficiaries~~] of the retirement system [~~that are in the custody of the system~~] are [~~considered to be personnel records and are required to be treated as~~] confidential within the terms of Section 815.503 [~~information under Section 552.101~~].

SECTION 34. Subdivision (18), Subsection (a), Section 3, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(18) "Institution of higher education" means any public community/junior college or senior college or university, or any other agency of higher education within the meaning and jurisdiction of Chapter 61, Education Code, except The University of Texas System and The Texas A&M University System. [~~The term does not include Texas Tech University and the University of Houston System unless either of these entities elects to participate in accordance with Section 3A of this Act.~~]

SECTION 35. Section 3A, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 3A. PARTICIPATION BY CERTAIN ENTITIES [~~CERTAIN INSTITUTIONS MAY ELECT TO PARTICIPATE~~]. (a) The Texas Municipal Retirement System and the Texas County and District Retirement System shall [~~Texas Tech University, the University of Houston System, or both may~~] participate in the Texas Employees Uniform Group Insurance [~~Benefits~~] Program administered by the Employees Retirement System of Texas under this Act. Participation is limited to the officers and employees of the systems; eligible dependents of the officers and employees; persons who have retired from either system, who receive or are eligible to receive an annuity from either system or under Chapter 803, Government Code, based on at least 10 years of service credit, who have at least three years of service with a department, including either system, whose employees are authorized to participate in the program provided by this Act, and who were officers or employees of either system; and eligible dependents of the retired officers and employees. An officer or employee of either system is an employee for purposes of this Act, and a retired officer

or employee of either system is an annuitant for purposes of this Act. Participation under this subsection does not include the governing bodies of either system, the municipalities or subdivisions participating in either system, or the trustees, officers, or employees, or their dependents, of the participating municipalities or subdivisions. A participant described by this subsection may not receive a state contribution for premiums [~~The university or system must notify the trustee of its election to participate not later than April 1, 1992~~].

(b) A person who began employment with, or became an officer of, the Texas Turnpike Authority within the three-year period preceding August 31, 1997, who was an officer or employee of the Texas Turnpike Authority on that date, who became an officer or employee of the North Texas Tollway Authority on September 1, 1997, and who retires or is eligible to retire with at least 10 years of service credit under the proportionate retirement program established by Chapter 803, Government Code, or under one of the public retirement systems to which Chapter 803 applies may participate in the programs and coverages provided by this Act as an annuitant and may obtain coverage for the person's dependents as any other participating annuitant. The North Texas Tollway Authority is responsible for payment of the contributions the state would make if the annuitants were state employees.

SECTION 36. Section 4B, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended by adding Subsections (c-1), (c-2), and (c-3) to read as follows:

(c-1) The board of trustees may modify or delete a proposed finding of fact or conclusion of law contained in a proposal for decision submitted by an administrative law judge or other hearing examiner, or make alternative findings of fact and conclusions of law, in a proceeding considered to be a contested case under Chapter 2001, Government Code. The board of trustees shall state in writing the specific reason for the determination and may adopt rules for the implementation of this subsection.

(c-2) Notwithstanding Subsections (c) and (d) of this section, the trustee and a person who has standing to pursue an administrative appeal may at any time informally negotiate an award of benefits. Negotiated benefits may not exceed the maximum benefits otherwise available or required by law.

(c-3) On behalf of the trustee, the executive director may refer an appeal made under Subsection (c) of this section to the State Office of Administrative Hearings for a hearing or, notwithstanding Section 2003.021, Government Code, or other law, employ or contract for the services of an administrative law judge or hearing examiner not affiliated with the State Office of Administrative Hearings to conduct the hearing.

SECTION 37. Section 5, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended by amending Subsections (a), (d), and (f) and adding Subsection (e) to read as follows:

(a) The trustee is authorized, empowered, and directed to establish plans of group coverages for active employees and retired employees which in the trustee's discretion may include but are not necessarily limited to the following: group life coverages, accidental death and dismemberment, health benefits plans, including but not limited to hospital care and benefits, surgical care and treatment, medical care and treatment, dental care, obstetrical benefits, prescribed drugs, medicines, and prosthetic devices and supplemental benefits, supplies, and services in conformity with the provisions of this Act, protection against either long or short term loss of salary and any other group coverages which in the discretion of the trustee with consultation from the advisory

committee shall be deemed advisable. All rules and regulations shall be promulgated pursuant thereto. The trustee shall determine the coverages desired for state employees and other eligible participants [~~will submit this information to the State Board of Insurance for any recommendations as to the types and sufficiency of such coverages. The State Board of Insurance will notify the board of trustees within 30 days as to any such recommendations and will furnish the board of trustees with a list of all carriers authorized to do business in the State of Texas who would be eligible to bid on the coverages that are to be insured by a carrier~~]. The trustee will notify eligible [~~those~~] carriers that competitive bidding will be conducted and that they are to submit their bids to the trustee [~~State Board of Insurance~~] by a specified date if they wish to bid on the contract. An actuary selected by the trustee shall advise the trustee as to the actuarial soundness of the bids received. [~~The State Board of Insurance will, after the designated closing date of receiving bids, examine and evaluate the bidding contracts and certify their actuarial soundness to the trustee within 15 days from the closing date.~~] The trustee shall select the desired carrier or carriers and will notify the bidding eligible carriers as to the results of the bidding. The trustee shall select the desired carrier or carriers to provide services that will [~~which shall~~] be in the best interest of the employees covered by this Act. The trustee is not required to select the lowest bid but shall take into consideration other factors such as ability to service contracts, past experience, financial ability, and other relevant criteria. Should the trustee select a carrier whose bid differs from that advertised, such deviation shall be recorded and the reasons for such deviation shall be fully justified and explained in the minutes of the next meeting of the trustee. The trustee shall submit the coverages provided by the group plan for competitive bidding at least every six years.

(d) No department shall establish, continue, or authorize payroll deductions or reductions for any benefits or coverage as provided in this Act without the express approval of the trustee[~~, except for benefits from the deferred compensation program established pursuant to Chapter 197, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-3b, Vernon's Texas Civil Statutes)~~].

(e) Before the first day of each state fiscal biennium, the trustee shall estimate for an average 60-day period during the biennium the expenditures from the fund anticipated for self-funded plans, considering claims and administrative expenses for those plans that are projected to be incurred. The trustee shall place the estimated amount in a contingency reserve fund to provide for adverse fluctuations in claims or administrative expenses. The trustee shall include in each request for legislative appropriations to the program the amount the trustee determines to be necessary to maintain the contingency reserve fund at the level required by this subsection. The trustee may invest and reinvest any portion of the contingency reserve fund under the standard of care provided by Section 815.307, Government Code, considering the functional need to provide for adverse fluctuations in claims or administrative expenses. The interest on, earnings of, and proceeds from the sale of investments of assets in the contingency reserve fund shall be credited to the fund.

(f) The trustee, in its sole discretion and in accordance with the requirements of this section, shall determine those plans of coverages for which the trustee does not intend to purchase insurance and which it intends to provide directly from the Employees Life, Accident, and Health Insurance and Benefits Fund. Any plan of coverages for which the trustee does not purchase insurance but provides under this Act on a self-funded basis is exempt from any other insurance law unless the law expressly applies to this plan or this Act. A qualified actuary selected by the trustee

shall advise the trustee as to an actuarially sound level of contributions required to provide coverages directly from the fund. [~~The trustee shall make an estimate of the unrestricted balance of the fund. Unless such estimated unrestricted balance is equal to at least 10 percent of the total benefits expected to be provided directly from the fund as a result of claims incurred during the fiscal year, the trustee shall include in the contributions required the amount necessary to establish an unrestricted balance in the fund of not less than 10 percent. The unrestricted balance shall be placed in a contingency reserve fund to provide for adverse fluctuations in future charges, claims, costs, or expenses of the program.~~]

SECTION 38. Section 6, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 6. BENEFIT CERTIFICATES; IDENTIFICATION CARDS. (a) The trustees shall provide for the issuance to each employee insured under this Act a certificate of insurance setting forth the benefits to which the employee is entitled, to whom the benefits are payable, to whom the claims shall be submitted, and summarizing the provisions of the policy principally affecting the employee.

(b) The trustee may issue a single identification card to participants in a health benefits plan and separately administered coverage under this Act that offers pharmacy benefits. The card may contain information regarding both health and pharmacy benefits.

SECTION 39. Section 7, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 7. ANNUAL REPORT. The [~~As soon as practicable after the end of each calendar year but not later than 90 days thereafter, the~~] trustee shall make a written report not later than January 1 of each year to the governor, lieutenant governor, speaker of the house of representatives, and Legislative Budget Board [~~State Board of Insurance~~] concerning the coverages provided and the benefits and services being received by all employees insured under the provisions of this Act and including information about the effectiveness and efficiency of managed care cost containment practices and fraud detection and prevention procedures. [~~It shall be the duty of the State Board of Insurance to review such report and advise the trustee in regard to the features of the coverages provided for employees and cooperate fully with the trustee in carrying out the purposes of the Act.~~]

SECTION 40. Section 8, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 8. REINSURANCE. The trustee, in its sole discretion and under conditions it approves, may reinsure any coverage that it has determined will be provided directly from the fund in accordance with Section 5(f) of this Act. [~~(a) The trustee shall arrange with any carrier or carriers issuing any policy or policies under this Act for the reinsurance, under conditions approved by the trustee, of portions of the total amount of insurance under such policy or policies, with other qualified carriers which elect to participate in the reinsurance.~~

[~~(b) The trustee shall determine for and in advance of a policy year which qualified carriers are eligible to participate as reinsurers and the amount of insurance under a policy or policies which is to be allocated to the issuing company and reinsurers. The trustee shall make this determination when a participating company withdraws.~~]

SECTION 41. Section 10, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended by adding Subsection (c) to read as follows:

(c) The records of a participant in the Texas Employees Uniform Group Insurance Program in the custody of the trustee, or of an administrator or carrier acting on behalf of the trustee, are confidential and not subject to disclosure and are exempt from the public access provisions of Chapter 552, Government Code, except as provided by this subsection. Records may be released to a participant or to an authorized attorney, family member, or representative acting on behalf of the participant. The trustee may release the records to an administrator, carrier, or agent or attorney acting on behalf of the trustee, to another governmental entity, to a medical provider of the participant for the purpose of carrying out the purposes of this Act, or to a party in response to a subpoena issued under applicable law. The records of a participant remain confidential after release to a person as authorized by this subsection. The records of a participant may become part of the public record of an administrative or judicial proceeding related to a contested case under this Act, unless the records are closed to public access by a protective order issued under applicable law.

SECTION 42. Subdivision (3), Subsection (e), Section 11, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(3) An annuitant [~~A retiree~~] participating in optional term life insurance coverage is not eligible for premium-waived extended insurance benefits [~~or accelerated life insurance benefits~~] if the total disability [~~or terminal condition, respectively,~~] begins after the date of retirement. Accidental death and dismemberment insurance coverage ceases on the date of retirement, regardless of age. An annuitant participating in optional term life insurance coverage is eligible for accelerated life insurance benefits as provided by rules adopted under the authority of Subsection (d) of this section, as added by Chapter 1048, Acts of the 75th Legislature, Regular Session, 1997.

SECTION 43. Section 11A, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 11A. PAYMENT OF ACCELERATED BENEFITS; IRREVOCABLE DESIGNATION OF BENEFICIARY. [~~(a)~~] The trustee shall adopt rules requiring a group life insurance program provided to employees, including annuitants or dependents, to include a provision allowing the employee, annuitant, or dependent to make, in conjunction with receipt of a viatical settlement, an irrevocable designation of beneficiary for part or all of the group life coverage benefits. A viatical settlement is not valid for any coverage under the Texas Employees Uniform Group Insurance Program unless the employee, annuitant, or dependent has a terminal illness or terminal injury, as defined by rules adopted by the trustee, at the time application for benefits is made.[~~:~~

[~~(1) elect to receive an accelerated benefit under Article 3.50-6, Insurance Code, subject to the provisions of that article; or~~

[~~(2) make, in conjunction with receipt of a viatical settlement, an irrevocable designation of a beneficiary for all or a part of the group life coverage benefits.~~

[~~(b)~~] In this section, "viatical settlement" has the meaning assigned by Article 3.50-6A, Insurance Code.

SECTION 44. Section 13, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended by adding Subsection (e) to read as follows:

(e) Except as provided by Section 13A of this Act, on application to the trustee and arrangement for payment of contributions, a former member of a board or commission described by Section 3(a)(5)(A)(vi) of this Act or a former member of the governing body of an institution of higher education remains eligible for participation in a group health coverage plan offered under this Act as long as no lapse in coverage occurs after the end of the former member's term. A participant described by this subsection may not receive a state contribution for premiums, but the governing body of an institution of higher education may elect to pay from local funds part or all of the contributions the state would pay for similar coverage of other participants in the program. The participant's contribution for coverage under a group health coverage plan may not be greater than the contribution for continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272).

SECTION 45. Subsection (d), Section 13B, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(d) Each employee shall be enrolled in the premium conversion benefit portion of the cafeteria plan [~~unless the employee notifies the trustee in writing that the employee elects not to be enrolled~~]. Notwithstanding any provision of Section 16B of this Act to the contrary, the trustee may not establish a fee or charge for administering the premium conversion benefit portion of the cafeteria plan.

SECTION 46. The Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code) is amended by adding Section 16A to read as follows:

Sec. 16A. MANAGEMENT OF ASSETS. The trustee may commingle for investment purposes the assets of any fund created under this Act with any other fund created under this Act or any other trust fund administered by the trustee, as long as proportionate ownership records are maintained and credited.

SECTION 47. The Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code) is amended by adding Section 16C to read as follows:

Sec. 16C. EMPLOYEES' HEALTH CARE STABILIZATION TRUST FUND. (a) The employees' health care stabilization trust fund is a special fund in the treasury outside the general revenue fund.

(b) The fund is composed of:

(1) money transferred to the fund at the direction of the legislature;

(2) gifts and grants contributed to the fund; and

(3) the returns received as interest on, and from investment of, money in the fund.

(c) The trustee shall administer the fund. The trustee may manage and invest the money in the fund under the standard of care provided by Section 815.307, Government Code. In administering the fund, the trustee shall make investments in a manner that preserves the purchasing power of the fund's assets.

(d) Money in the fund may not be spent for any purpose, except that the interest and investment returns of the fund may be appropriated only for the purpose of stabilizing the cost of state and participant contributions for health care coverage under this Act by minimizing to the greatest extent possible increases in those contributions.

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

SECTION 48. Subsection (a), Section 18, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(a) The group benefits advisory committee is composed of 26 voting members as provided by this section. The office of the attorney general, the office of the comptroller, the Railroad Commission of Texas, the General Land Office, and the Department of Agriculture are entitled to be represented by one member each on the committee, who may be appointed by the governing body of the state agency or elected by and from the employees of the agency, as determined by rule by the governing body of the agency. One employee shall be elected from each of the remaining eight largest state agencies that are governed by appointed officers by and from the employees of those agencies. One nonvoting member shall be the executive director of the Employees Retirement System of Texas. One member shall be an expert in employee benefit issues from the private sector, appointed by the governor. One member shall be an expert in employee benefits issues from the private sector, appointed by the lieutenant governor. One member shall be a retired state employee appointed by the trustee. One member shall be a state employee of a state agency eligible for membership in the Texas Small State Agency Task Force [~~other than one of the eight largest state agencies~~], appointed by the trustee. Not more than one employee from a particular state agency may serve on the committee. Each of the seven largest institutions of higher education, as determined by the number of employees on the payroll of an institution, shall elect one member of the committee from among persons who have each been nominated by a petition signed by at least 300 employees. Two members shall be employees of institutions of higher education, other than the seven largest institutions of higher education, who are appointed by the Texas Higher Education Coordinating Board, but not more than one employee shall be from any one institution. The members shall elect a presiding officer from their membership to serve a one-year term.

SECTION 49. Subsection (b), Section 19, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(b) A surviving spouse of an employee or a retiree who is entitled to monthly benefits paid by a retirement system named in this Act may, following the death of the employee or retiree, elect to retain the spouse's authorized coverages and also retain authorized coverages for any dependent of the spouse, at the group rate for employees, provided such coverage was previously secured by the employee or retiree for the spouse or dependent, and the spouse directs the applicable retirement system to deduct required contributions from the monthly benefits paid the surviving spouse by the retirement system. A surviving dependent of a retiree who was receiving monthly benefits paid by a retirement system named in this Act may, after the death of the retiree and if the retiree leaves no surviving spouse, elect to retain any coverage previously secured by the retiree, at the group rate for employees, until the dependent becomes ineligible for coverage for a reason other than the death of the member of the group. A dependent who makes an election under this subsection and who is entitled to monthly benefits from a retirement system named in this Act based on the service of the deceased retiree must direct the applicable retirement system to deduct required contributions for the coverage from the monthly benefits paid the surviving dependent

by the retirement system. If funds are specifically appropriated for the purpose, the state shall pay the same portion of the cost of the required contributions for a deceased retiree's surviving spouse or other surviving dependent who elects to retain coverage under this subsection as it pays for similar dependent coverage for an employee or retiree participating in the program.

SECTION 50. Subsection (a), Section 403.026, Government Code, as added by Chapter 1153, Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

(a) The comptroller shall conduct a study each biennium to determine the number and type of fraudulent claims for medical or health care benefits submitted:

(1) under the state Medicaid program; or

(2) [~~under group health insurance programs administered through the Employees Retirement System of Texas for active and retired state employees; or~~

[~~(3)~~] by or on behalf of a state employee and administered by the attorney general under Chapter 501, Labor Code.

SECTION 51. Section 609.007, Government Code, is amended by adding Subsection (d) to read as follows:

(d) A contract created under this section need not be in writing and may be communicated to the plan administrator electronically or by any other means approved by the plan's trustees.

SECTION 52. Section 609.505, Government Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) The board of trustees, in accordance with rules adopted under this subchapter, may contract with a [~~qualified~~] vendor qualified to participate in a deferred compensation plan.

(c) A vendor or investment product having an ownership or other financial interest in the contractor selected by the board of trustees to administer a deferred compensation plan is not qualified to participate in that plan.

(d) The board of trustees shall select vendors or investment products based on the quality of investment performance, proven ability to manage institutional assets, minimum net worth requirements, fee structure, compliance with applicable federal and state laws, and other criteria established by the board. The board of trustees shall determine the minimum and maximum number of vendors and investment products that may be offered by a plan at any particular time.

SECTION 53. Section 609.510, Government Code, is amended to read as follows:

Sec. 609.510. EXEMPTION FOR CERTAIN CONTRACTS. A contract authorized by Section 609.505 [~~for TexaSaver~~] or by Section 609.509 for either deferred compensation plan is exempt from:

(1) Subtitle D, Title 10;

(2) Chapter 463; and

(3) Chapter 2254.

SECTION 54. Section 615.001, Government Code, is amended to read as follows:

Sec. 615.001. DEFINITION. In this chapter, "minor child" means a child who, on the date of the death of an individual listed under Section 615.003, is younger than 18 [~~21~~] years of age.

SECTION 55. Subchapter C, Chapter 2155, Government Code, is amended by adding Section 2155.146 to read as follows:

Sec. 2155.146. CERTAIN PURCHASES BY EMPLOYEES RETIREMENT SYSTEM OF TEXAS. (a) The Employees Retirement System of Texas is delegated all purchasing functions relating to the purchase of goods or services from funds other than general revenue funds for a purpose the retirement system determines relates to the fiduciary duties of the retirement system.

(b) The Employees Retirement System of Texas shall acquire goods or services by any procurement method approved by the board of trustees of the retirement system that provides the best value to the retirement system. The retirement system shall consider the best value standards enumerated in Section 2155.074, as added by Chapter 1206, Acts of the 75th Legislature, Regular Session, 1997.

(c) The commission shall procure goods or services for the Employees Retirement System of Texas at the request of the retirement system, and the retirement system may use the services of the commission in procuring goods or services.

SECTION 56. Subsection (b), Section 2171.055, Government Code, is amended to read as follows:

(b) An institution of higher education as defined by Section 61.003, Education Code, is not required to participate in the commission's contracts for travel agency services or other travel services purchased from funds other than general revenue funds or educational and general funds as defined by Section 51.009, Education Code. The Employees Retirement System of Texas is not required to participate in the commission's contracts for travel agency services or other travel services purchased from funds other than general revenue funds.

SECTION 57. (a) Monthly payments of a retirement or death benefit annuity by the Employees Retirement System of Texas under Subtitle B, Title 8, Government Code, are increased beginning with the first payment of the annuities that becomes due on or after the effective date of this section.

(b) The increase does not apply to annuities payable under Section 814.103, Government Code.

(c) The amount of the monthly increase is computed by multiplying the previous monthly benefit by a percentage determined in accordance with the following table:

| LATEST RETIREMENT DATE OR, IF APPLICABLE, DATE OF DEATH | INCREASE |
|---|---|
| Before September 1, 1953 | 49% |
| On or after September 1, 1953, but before September 1, 1954 | 47% |
| On or after September 1, 1954, but before September 1, 1955 | 52% |
| On or after September 1, 1955, but before September 1, 1956 | 45% |
| On or after September 1, 1956, but before September 1, 1958 | 49% |
| On or after September 1, 1958, but before September 1, 1959 | 52% |
| On or after September 1, 1959, but before September 1, 1960 | 47% |
| On or after September 1, 1960, but before September 1, 1961 | 49% |
| On or after September 1, 1961, but before September 1, 1962 | 47% |
| On or after September 1, 1962, but before September 1, 1963 | 45% |
| On or after September 1, 1963, but before September 1, 1964 | 47% |
| On or after September 1, 1964, but before September 1, 1965 | 49% |
| On or after September 1, 1965, but before September 1, 1967 | 52% |
| On or after September 1, 1967, but before September 1, 1968 | 54% |
| On or after September 1, 1968, but before September 1, 1970 | 49% |
| On or after September 1, 1970, but before September 1, 1972 | 54% |

| | |
|---|---|
| On or after September 1, 1972, but before September 1, 1973 | 47% |
| On or after September 1, 1973, but before September 1, 1974 | 37% |
| On or after September 1, 1974, but before September 1, 1975 | 35% |
| On or after September 1, 1975, but before September 1, 1976 | 45% |
| On or after September 1, 1976, but before September 1, 1977 | 41% |
| On or after September 1, 1977, but before September 1, 1978 | 49% |
| On or after September 1, 1978, but before September 1, 1979 | 37% |
| On or after September 1, 1979, but before September 1, 1981 | 23% |
| On or after September 1, 1981, but before September 1, 1982 | 20% |
| On or after September 1, 1982, but before September 1, 1983 | 22% |
| On or after September 1, 1983, but before September 1, 1984 | 23% |
| On or after September 1, 1984, but before September 1, 1985 | 20% |
| On or after September 1, 1985, but before September 1, 1986 | 23% |
| On or after September 1, 1986, but before September 1, 1987 | 19% |
| On or after September 1, 1987, but before September 1, 1988 | 20% |
| On or after September 1, 1988, but before September 1, 1989 | 15% |
| On or after September 1, 1989, but before September 1, 1990 | 12% |
| On or after September 1, 1990, but before September 1, 1991 | 9% |
| On or after September 1, 1991, but before September 1, 1992 | 7% |
| On or after September 1, 1992, but before September 1, 1993 | 6% |
| On or after September 1, 1993, but before September 1, 1994 | 12% |
| On or after September 1, 1994, but before September 1, 1995 | 9% |
| On or after September 1, 1995, but before September 1, 1996 | 6% |
| On or after September 1, 1996, but before September 1, 1997 | 3% |
| On or after September 1, 1997, but before September 1, 1998 | 2% |
| On or after September 1, 1998, but before September 1, 1999 | 1% |

SECTION 58. The Employees Retirement System of Texas shall make a supplemental payment under Section 814.603(d), Government Code, in the fiscal year beginning September 1, 2000, if the payment is in compliance with Section 811.006, Government Code.

SECTION 59. The Employees Retirement System of Texas shall recompute each annuity being paid under Subtitle E, Title 8, Government Code, on December 31, 1999, as if the retirement or death on which the annuity is based occurs on that date. Payments of an annuity recomputed under this section begin with the first payments that become due after December 31, 1999.

SECTION 60. The change in law made by this Act to Section 814.1041, Government Code, prevails over any other Act of the 76th Legislature, Regular Session, 1999, regardless of the relative dates of enactment, that purports to amend Section 814.1041 or create a similar provision to allow a temporary retirement option for members of the Employees Retirement System of Texas whose positions are subject to privatization or a reduction in workforce or who are transferred between state agencies, and any amendment to Section 814.1041, Government Code, or similar provision in another Act of the 76th Legislature, Regular Session, 1999, has no effect.

SECTION 61. Before October 1, 1999, the Board of Pardons and Paroles and the Texas Department of Criminal Justice shall certify to the Employees Retirement System of Texas, in the manner prescribed by the retirement system, the name of each person employed by the board on September 1, 1999, as a custodial officer as defined by Section 811.001, Government Code, as amended by this Act, and such other information as the system determines is necessary for the crediting of service and financing of benefits under Subtitle B, Title 8, Government Code.

SECTION 62. Section 813.405, Government Code, and Subsections (b), (c), and (g), Section 5, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), are repealed.

SECTION 63. (a) Except as provided by Subsection (b) of this section, Subsection (b), Section 814.302, Government Code, as amended by this Act, applies only to deaths of contributing members of the Employees Retirement System of Texas that occur on or after the effective date of this Act.

(b) The surviving spouse of a contributing member of the Employees Retirement System of Texas who died before the effective date of this Act and whose account has not been refunded may apply for and receive a death benefit annuity under Subsection (b), Section 814.302, Government Code, as amended by this Act. The effective date of an annuity under this subsection is the last day of the month in which the member died. The amount of an annuity payable under this subsection will be determined under the plan terms in effect in the month in which the member died. The retirement system shall make a lump-sum payment of all unpaid annuity payments under this subsection at the time the first payment of the annuity becomes due on or after the effective date of this Act. This subsection expires December 31, 1999.

SECTION 64. Notwithstanding Section 3A, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), as amended by this Act, a person who retires from the Texas County and District Retirement System or the Texas Municipal Retirement System on or after the effective date of this Act but before September 1, 2002, is not required to meet the requirement of three years of service for a department whose employees are authorized to participate in the program provided by that Act to continue participation authorized by that section.

SECTION 65. Section 814.1082, Government Code, as added by this Act, applies only to retirements that occur on or after January 1, 2000.

SECTION 66. This Act takes effect September 1, 1999, except Sections 42, 43, and 57, which take effect January 1, 2000.

SECTION 67. 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 Armbrister, the Senate concurred in the House amendment to **SB 1130** by a viva voce vote.

**STATEMENT OF LEGISLATIVE INTENT**

Senator Armbrister submitted the following statement of legislative intent for **SB 1130**:

During discussion of **SB 1130** in the Texas House of Representatives on May 25, a question was raised regarding the contingency reserve fund and whether Section 37 of the bill bound future legislatures to fund it. As a result of that discussion, I wish to enter into the *Senate Journal* my legislative intent in regard to this matter.

Section 37 was drafted to clarify the amount and method of calculating the reserve. The need for clarification of the existing statute was suggested by the State Auditor's Office in a report made during the interim. Section 37 was not drafted to mandate an appropriation to fund it. As stated in a letter from the Legislative Council, the Employees Retirement System of Texas is instructed to

request appropriations for any amounts needed to maintain the contingency reserve fund at the defined level. It does not, however, bind any future legislatures to fund it. Appropriated funds may be used for this purpose as they have been in the past or the Employees Retirmement System of Texas can maintain the reserve fund by using other funds available for the insurance program, e.g., earnings from the insurance investment fund, reduced benefits and increased co-pays.

ARMBRISTER

**CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2145 ADOPTED**

Senator Whitmire called from the President's table the Conference Committee Report on **HB 2145**. The Conference Committee Report was filed with the Senate on Thursday, May 27, 1999.

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

**CONFERENCE COMMITTEE REPORT ON SENATE BILL 46 ADOPTED**

Senator Carona called from the President's table the Conference Committee Report on **SB 46**. The Conference Committee Report was filed with the Senate on Thursday, May 27, 1999.

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

**CONFERENCE COMMITTEE REPORT ON HOUSE BILL 610 ADOPTED**

Senator Carona called from the President's table the Conference Committee Report on **HB 610**. The Conference Committee Report and was filed with the Senate on Thursday, May 27, 1999.

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

**SENATE BILL 844 WITH HOUSE AMENDMENT**

Senator Carona called **SB 844** from the President's table for consideration of the House amendment to the bill.

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

**Floor Amendment No. 1**

Amend **SB 844** (senate engrossment) as follows:

(1) In SECTION 1 of the bill, strike Subdivision (4) (page 1, lines 12-13) and substitute the following:

(4) a municipal police officer in a municipality with a population of:

(A) 100,000 or more; or

(B) 74,000 or more in a county with a population of more than 1.5 million; or

(2) In SECTION 2 of the bill, strike Subdivision (1) (page 1, lines 22-24) and substitute the following:

(1) to enforce this subchapter in any area of this state other than in the territory of a municipality with a population of more than:

(A) 100,000; or

(B) 74,000 in a county with a population of more than 1.5 million; and

The amendment was read.

On motion of Senator Carona, the Senate concurred in the House amendment to **SB 844** by a viva voce vote.

## CONFERENCE COMMITTEE ON HOUSE BILL 2434

Senator Moncrief 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 2434** 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 2434** 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 Moncrief, Chair; Ellis, Nixon, Lindsay, and Madla.

## MOTION TO GRANT REQUEST FOR CONFERENCE COMMITTEE ON HOUSE BILL 3158

Senator Madla called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3158** and moved that the request be granted.

The motion was lost by a viva voce vote.

## SENATE BILL 1651 WITH HOUSE AMENDMENT

Senator Jackson called **SB 1651** 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 1651** in SECTION 2 of the bill (senate engrossment) as follows:

(1) In Subsection (a) (page 1, lines 14 and 15), strike "an institution" and substitute "a particular institution".

(2) In Subsection (a) (page 1, line 17), between "shall" and "assist", insert "review and may approve the transition and shall".

(3) In Subsection (b) (page 1, line 23), strike "selected" and substitute "as approved".

The amendment was read.

Senator Jackson moved to concur in the House amendment to **SB 1651**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON HOUSE BILL 3799 ADOPTED**

Senator Gallegos called from the President's table the Conference Committee Report on **HB 3799**. The Conference Committee Report was filed with the Senate on Thursday, May 27, 1999.

On motion of Senator Gallegos, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON SENATE JOINT RESOLUTION 12 ADOPTED**

Senator Carona called from the President's table the Conference Committee Report on **SJR 12**. The Conference Committee Report was filed with the Senate on Wednesday, May 26, 1999.

On motion of Senator Carona, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**SENATE BILL 1866 WITH HOUSE AMENDMENT**

Senator Lindsay called **SB 1866** 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 1866** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the creation of the Harris County Municipal Management District No. 1; providing authority to impose a tax and issue bonds.

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

SECTION 1. Chapter 376, Local Government Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. HARRIS COUNTY MUNICIPAL MANAGEMENT DISTRICT NO. 1

Sec. 376.301. CREATION OF DISTRICT. (a) The Harris County Municipal Management District No. 1 is created as a special district under Section 59, Article XVI, Texas Constitution.

(b) The board by resolution may change the district's name.

(c) The creation of the district is essential to accomplish the purposes of Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other public purposes stated in this subchapter.

Sec. 376.302. DECLARATION OF INTENT. (a) The creation of the district is necessary to promote, develop, encourage, and maintain employment, commerce, transportation, housing, tourism, recreation, arts, entertainment, economic development, safety, and the public welfare in the district.

(b) The creation of the district and this legislation are not to be interpreted to relieve the county or the municipality from providing the level of services, as of the effective date of this subchapter, to the area in the district or to release the county or the municipality from the obligations each entity has to provide services to that area. The district is created to supplement and not supplant the municipal or county services provided in the area in the district.

(c) By creating the district and in authorizing the municipality, county, and other political subdivisions to contract with the district, the legislature has established a program to accomplish the public purposes set out in Section 52-a, Article III, Texas Constitution.

Sec. 376.303. DEFINITIONS. In this subchapter:

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

(2) "County" means Harris County.

(3) "District" means the Harris County Municipal Management District No. 1.

(4) "Municipality" means the City of Houston.

(5) "Utility" means a person that provides to the public gas, electricity, telephone, sewage, or water service.

Sec. 376.304. BOUNDARIES. The district includes all the territory contained within the following described area:

BEGINNING AT A POINT located at the intersection of the east right-of-way line of Bunker Hill Road and the north right-of-way line of Interstate Highway 10 frontage road, in the City of Houston, Harris County, Texas;

THENCE, in a southerly direction crossing Interstate Highway 10 along the east right-of-way line of Bunker Hill Road to the extension of the south right-of-way line of Barryknoll Lane;

THENCE, in a westerly direction following the south right-of-way line of Barryknoll Lane to the northwest corner of the Riedel Estates;

THENCE, in a southerly direction approximately 930 feet following the west property line of Riedel Estates;

THENCE, in a westerly direction approximately 625 feet following the north right-of-way line of Kimberly Lane to the east boundary of a H.C.F.C.D. easement;

THENCE, in a northerly direction approximately 690 feet following the east boundary line of a H.C.F.C.D. easement to a point being an intersection of the east line of said ditch with the southeasterly projection of the north line of Memorial Hollow Section 8;

THENCE, in a west northwesterly direction approximately 625 feet following the north line of Memorial Hollow Section 8, to a point in the south right-of-way line of Barryknoll Lane;

THENCE, in a westerly direction to the intersection of the south right-of-way line of Barryknoll Lane and the east right-of-way line of Plantation Road;

THENCE, in a southerly direction approximately 620 feet following the east right-of-way line of Plantation Road to a point;

THENCE, in a west northwesterly direction approximately 820 feet, along the north property line of Memorial Hollow Section 7, to a point on the west right-of-way line of Gessner Road;

THENCE, in a northerly direction approximately 600 feet following the west right-of-way line of Gessner Road, to the northeast corner of Memorial Hollow Section 6 Replat;

THENCE, in a westerly direction along the north property line of Memorial Hollow Section 6 Replat to the east right-of-way line Frostwood Drive;

THENCE, in a southerly direction approximately 60 feet along a curve to the left, being the east right-of-way line of Frostwood Drive;

THENCE, in a westerly direction approximately 450 feet along the north subdivision line to the northwest corner of Memorial Hollow Section 5 Replat;

THENCE, in a northerly direction approximately 2,400 feet to a point in the north right-of-way line of the Interstate Highway 10 frontage road;

THENCE, in an easterly direction along the north right-of-way of Interstate Highway 10 frontage road approximately 5,400 feet to the POINT OF BEGINNING.

SAVE AND EXCEPT the subdivision known as Memorial Village Townhouses Section 1 and Memorial Village Townhouses Section 2, more particularly described by metes and bounds as follows;

BEGINNING at a point approximately 190 feet west along the north right-of-way of Barryknoll Lane from the intersection of Barryknoll Lane and the west right-of-way line of Bunker Hill Road;

THENCE, in a westerly direction approximately 570 feet along the north right-of-way of Barryknoll Lane to the southwest corner of Memorial Village Townhouses Section 2;

THENCE, in a northerly direction approximately 435 feet to a point for corner;

THENCE, in an easterly direction approximately 180 feet to a point for corner;

THENCE, in a northerly direction approximately 136 feet to a point for corner;

THENCE, in a westerly direction approximately 183 feet to a point for corner;

THENCE, in a northerly direction approximately 405 feet to the northeast corner of Memorial City Terrace Replat to a point for corner;

THENCE, in an easterly direction approximately 770 feet to a point in the west right-of-way line of Bunker Hill Road;

THENCE, in a southerly direction approximately 60 feet along the west right-of-way of Bunker Hill Road to a point for corner;

THENCE, in a westerly direction approximately 200 feet to a point for corner;

THENCE, in a southerly direction approximately 920 feet to the north right-of-way line on Barryknoll Lane and being the POINT OF BEGINNING.

SAVE AND EXCEPT all tracts or parcels of land, rights-of-way, facilities, and improvements owned by a utility.

Sec. 376.305. FINDINGS RELATING TO BOUNDARIES. The boundaries and field notes of the district form a closure. If a mistake is made in the field notes or in copying the field notes in the legislative process, it does not affect the district's:

(1) organization, existence, or validity;

(2) right to issue any type of bond for the purposes for which the district is created or to pay the principal of and interest on a bond;

(3) right to impose or collect an assessment or taxes; or

(4) legality or operation.

Sec. 376.306. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) All the land and other property included in the district will be benefited by the improvements and services to be provided by the district under powers conferred by Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other

powers granted under this subchapter, and the district is created to serve a public use and benefit.

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

(1) further the public purposes of the development and diversification of the economy of the state; and

(2) eliminate unemployment and underemployment and develop or expand transportation and commerce.

(c) The district will:

(1) promote the health, safety, and general welfare of residents, employers, employees, visitors, consumers in the district, and the general public;

(2) provide needed funding to preserve, maintain, and enhance the economic health and vitality of the area as a community and business center; and

(3) further promote the health, safety, welfare, and enjoyment of the public by providing pedestrian ways and by landscaping and developing certain areas in the district, which are necessary for the restoration, preservation, and enhancement of scenic and aesthetic beauty.

(d) Pedestrian ways along or across a street, whether at grade or above or below the surface, and street lighting, street landscaping, and street art objects are parts of and necessary components of a street and are considered to be a street or road improvement.

(e) The district may not act as the agent or instrumentality of any private interest even though many private interests will be benefited by the district, as will the general public.

Sec. 376.307. APPLICATION OF OTHER LAW. Except as otherwise provided by this subchapter, Chapter 375 applies to the district.

Sec. 376.308. LIBERAL CONSTRUCTION OF SUBCHAPTER. This subchapter shall be liberally construed in conformity with the findings and purposes stated in this subchapter.

Sec. 376.309. BOARD OF DIRECTORS IN GENERAL. (a) The district is governed by a board of 11 directors who serve staggered terms of four years.

(b) A director shall receive compensation as provided by Section 49.060, Water Code.

Sec. 376.310. APPOINTMENT OF DIRECTORS. (a) The mayor and members of the governing body of the municipality shall appoint directors from persons recommended by the board. A person is appointed if a majority of the members and the mayor vote to appoint that person.

(b) A person may not be appointed to the board if the appointment of that person would result in less than two-thirds of the directors residing in the municipality.

Sec. 376.311. EX OFFICIO BOARD MEMBERS. (a) The following persons shall serve as a nonvoting ex officio director:

(1) the director of the following departments of the municipality:

(A) parks and recreation;

(B) planning and development;

(C) public works; and

(D) civic center;

(2) the municipality's chief of police;

(3) the county's general manager of the Metropolitan Transit Authority; and

(4) the presidents of any institutions of higher learning located in the district.

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

(c) The board may appoint the presiding officer of a nonprofit corporation that is actively involved in activities in the municipality's midtown area to serve as a nonvoting ex officio director.

Sec. 376.312. CONFLICTS OF INTEREST; ONE-TIME AFFIDAVIT. (a) Except as provided in this section:

(1) a director may participate in all board votes and decisions; and

(2) Chapter 171 governs conflict of interest for board members.

(b) Section 171.004 does not apply to the district. A director who has a substantial interest in a business or charitable entity that will receive a pecuniary benefit from a board action shall file a one-time affidavit declaring the interest. An additional affidavit is not required if the director's interest changes. After the affidavit is filed with the board secretary, the director may participate in a discussion or vote on that action if:

(1) a majority of the directors have a similar interest in the same entity; or

(2) all other similar business or charitable entities in the district will receive a similar pecuniary benefit.

(c) A director who is also an officer or employee of a public entity may not participate in the discussion of or vote on a matter regarding a contract with that same public entity.

(d) For purposes of this section, a director has a substantial interest in a charitable entity in the same manner that a person would have a substantial interest in a business entity under Section 171.002.

Sec. 376.313. ADDITIONAL POWERS OF DISTRICT. (a) The district may exercise the powers given to a corporation created under Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes).

(b) The district may exercise the powers given to a housing finance corporation created under Chapter 394 to provide housing or residential development projects in the district.

(c) The district may exercise the powers granted to an eligible political subdivision under Chapter 221, Natural Resources Code.

(d) The district may exercise its powers in areas outside the boundaries of the district if the board determines that there is a benefit to the district in exercising that power.

Sec. 376.314. AGREEMENTS: GENERAL; DONATIONS, INTERLOCAL AGREEMENTS, AND LAW ENFORCEMENT SERVICES. (a) The district may make an agreement with or accept a donation, grant, or loan from any person.

(b) The implementation of a project is a governmental function or service for the purposes of Chapter 791, Government Code.

(c) To protect the public interest, the district may contract with the municipality or the county for the municipality or county to provide law enforcement services in the district for a fee.

Sec. 376.315. NONPROFIT CORPORATION. (a) The board by resolution may authorize the creation of a nonprofit corporation to assist and act on behalf of the district in implementing a project or providing a service authorized by this subchapter.

(b) The board shall appoint the board of directors of a nonprofit corporation created under this section. The board of directors of the nonprofit corporation shall serve in the same manner, term, and conditions as a board of directors of a local government corporation created under Chapter 431, Transportation Code.

(c) A nonprofit corporation created under this section has the powers of and is considered for purposes of this subchapter to be a local government corporation created under Chapter 431, Transportation Code.

(d) A nonprofit corporation created under this section may implement any project and provide any service authorized by this subchapter.

Sec. 376.316. ANNEXATION. The district may:

(1) annex territory as provided by Subchapter C, Chapter 375; and

(2) annex territory located inside the boundaries of a reinvestment zone created by the municipality under Chapter 311, Tax Code, if the governing body of the municipality consents to the annexation.

Sec. 376.317. ASSESSMENTS. (a) The board may impose and collect an assessment for any purpose authorized by this subchapter. The imposition of an assessment requires that two-thirds of the board members vote in favor of the imposition.

(b) Assessments, reassessments, or assessments resulting from an addition to or correction of the assessment roll by the district, penalties and interest on an assessment or reassessment, expenses of collection, and reasonable attorney's fees incurred by the district:

(1) are a first and prior lien against the property assessed;

(2) are superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes; and

(3) are the personal liability of and charge against the owners of the property even if the owners are not named in the assessment proceedings.

(c) The lien is effective from the date of the resolution of the board levying the assessment until the assessment is paid. The board may enforce the lien in the same manner that the board may enforce an ad valorem tax lien against real property.

Sec. 376.318. PETITION REQUIRED FOR FINANCING SERVICES AND IMPROVEMENTS. The board may not finance a service or improvement project under this subchapter unless a written petition requesting the improvement or service has been filed with the board. The petition must be signed by the owners of a majority of the assessed value of real property in the district as determined by the most recent certified county property tax rolls.

Sec. 376.319. ELECTIONS. (a) In addition to the elections the district must hold under Subchapter L, Chapter 375, the district shall hold an election in the manner provided by that subchapter to obtain voter approval before the district imposes a maintenance tax or issues bonds payable from ad valorem taxes or assessments.

(b) The board may include more than one purpose in a single proposition at an election.

Sec. 376.320. MAINTENANCE TAX. (a) The district may impose and collect an annual ad valorem tax on taxable property in the district for the maintenance and operation of the district and the improvements constructed or acquired by the district or for the provision of services only if:

(1) two-thirds of the board members vote in favor of imposing the tax; and

(2) the tax is authorized at an election held in accordance with Section 376.319.

(b) The board shall determine the tax rate.

Sec. 376.321. UTILITIES. The district may not impose an assessment or impact fee on a utility's property.

Sec. 376.322. MUNICIPAL APPROVAL. (a) Except as provided by Subsection (b), the district must obtain approval from the municipality's governing body of:

(1) the issuance of bonds for an improvement project; and

(2) the plans and specifications of an improvement project financed by the bonds.

(b) If the district obtains approval from the municipality's governing body of a capital improvements budget for a period not to exceed five years, the district may finance the capital improvements and issue bonds specified in the budget without further approval from the municipality.

(c) The district must obtain approval from the municipality's governing body of the plans and specifications of any district improvement project related to the use of land owned by the municipality, an easement granted by the municipality, or a right-of-way of a street, road, or highway.

(d) Except as provided by Section 375.263, a municipality is not obligated to pay any bonds, notes, or other obligations of the district.

Sec. 376.323. DISBURSEMENTS OR TRANSFERS OF FUNDS. The board by resolution shall establish the number of directors' signatures and the procedure required for a disbursement or transfer of the district's money.

Sec. 376.324. COMPETITIVE BIDDING LIMIT. Section 375.221 does not apply to the district unless the contract is for more than $25,000.

Sec. 376.325. EXCEPTION FOR DISSOLUTION OF DISTRICT WITH OUTSTANDING DEBTS. (a) The board may vote to dissolve a district that has debt. If the vote is in favor of dissolution, the district shall remain in existence solely for the limited purpose of discharging its debts. The dissolution is effective when all debts have been discharged.

(b) Section 375.264 does not apply to the district.

SECTION 2. The legislature finds that:

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

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

(3) the general law relating to consent by political subdivisions to the creation of districts with conservation, reclamation, and road powers and the inclusion of land in those districts has been complied with; and

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

SECTION 3. Notwithstanding Section 376.310, Local Governmental Code, as added by this Act:

(1) the initial board of directors of the Harris County Municipal Management District No. 1 consists of:

| Pos. No. | Name of Board Member |
|---|---|
| 1. | Bill Huntsinger |
| 2. | Jana Lee |
| 3. | Kathy Miller |
| 4. | Randy Nerren |
| 5. | Lisa Zinis |
| 6. | Marshall Heins |
| 7. | Larry Beerman |
| 8. | John Chang |
| 9. | Gracie Saenz |
| 10. | Billy Reed |
| 11. | Bill Mosley; and |

(2) of the initial board members, the members appointed for positions 1 through 6 serve until June 1, 2003, and the members appointed for positions 7 through 11 serve until June 1, 2001.

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 Lindsay moved to concur in the House amendment to **SB 1866**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

## SENATE RESOLUTION 1180

Senator Lucio 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 558**, relating to training requirements for certain child-care providers, to consider and take action on the following matter:

Senate Rules 12.03(1) and (2) are suspended to permit the committee to amend Section 1 of the bill to read as follows:

SECTION 1. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.0421 to read as follows:

Sec. 42.0421. MINIMUM TRAINING STANDARDS. (a) The minimum training standards prescribed by the department under Section 42.042(p) for an employee of a day-care center or group day-care home must include:

(1) eight hours of initial training for an employee of a day-care center who has no previous training or employment experience in a regulated child-care facility, to be completed before the employee is given responsibility for a group of children;

(2) 15 hours of annual training for each employee of a day-care center or group day-care home, excluding the director; and

(3) 20 hours of annual training for each director of a day-care center or group day-care home.

(b) The minimum training standards prescribed by the department under Section 42.042(p) must require an employee of a licensed day-care center or group day-care home who provides care for children younger than 24 months of age to receive special training regarding the care of those children. The special training must be included as a component of the initial training required by Subsection (a)(1) and as a one-hour component of the annual training required by Subsections (a)(2) and (a)(3). The special training must include information on:

(1) recognizing and preventing shaken baby syndrome;

(2) preventing sudden infant death syndrome; and

(3) understanding early childhood brain development.

(c) The department by rule shall require an operator of a registered family home who provides care for a child younger than 24 months of age to complete one hour of annual training on:

(1) recognizing and preventing shaken baby syndrome;

(2) preventing sudden infant death syndrome; and

(3) understanding early childhood brain development.

(d) Section 42.042(m) does not apply to the minimum training standards required by this section.

Explanation: This amendment is necessary to require that the special training required by Section 42.0421(b), Human Resources Code, as added by the Act, be included as a component of the required eight hours of initial training.

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

Absent-excused: Luna.

**SENATE RESOLUTION 1175**

Senator Wentworth 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 in part, as provided by Senate Rule 12.08, to enable the conference committee appointed to resolve the differences on **HB 3549**, relating to the administration and collection of ad valorem taxes and certain local standby fees, to consider and take action on the following matter:

Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter that is not included in either the house or senate version of the bill to read as follows:

SECTION 32. Section 34.08(b), Tax Code, is amended to read as follows:

(b) A person may not commence an action challenging the validity of a tax sale after the time set forth in Section 33.54(a)(1) or (2), as applicable to the property, against a subsequent purchaser for value who acquired the property in reliance on the tax sale. The purchaser may conclusively presume that the tax sale was valid and shall have full title to the property free and clear of the right, title, and interest of any person that arose before the tax sale, subject only to recorded restrictive covenants and valid easements of record set forth in Section 34.01(n) [~~34.01(d)~~] and subject to applicable rights of redemption.

Explanation: This change is necessary to conform a cross-reference to Section 34.01(d), Tax Code, contained in Section 34.08(b), Tax Code, to the amendment of Section 34.01(d) made by the bill.

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

Absent-excused: Luna.

## CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2684 ADOPTED

Senator Gallegos called from the President's table the Conference Committee Report on **HB 2684**. The Conference Committee Report was filed with the Senate on Thursday, May 27, 1999.

On motion of Senator Gallegos, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

## SENATE BILL 875 WITH HOUSE AMENDMENT

Senator Shapiro called **SB 875** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 875** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the financial accountability of school districts.

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

SECTION 1. Chapter 39, Education Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. FINANCIAL ACCOUNTABILITY

Sec. 39.201. PROPOSED FINANCIAL ACCOUNTABILITY RATING SYSTEM. (a) The commissioner shall in consultation with the comptroller develop proposals for a school district accountability rating system, to be presented to the Legislature no later than December 15, 2000. This subsection expires September 1, 2001.

SECTION 2. Subsection (e), Section 44.008, Education Code, is amended to read as follows:

(e) The audit reports shall be reviewed by the agency, and the commissioner shall notify the board of trustees of objections, violations of sound accounting practices or law and regulation requirements, or of recommendations concerning the audit reports that the commissioner wants to make. If the audit report reflects that penal laws have been violated, the commissioner shall notify the appropriate county or district attorney and the attorney general. The commissioner shall have access to all vouchers, receipts, district fiscal and financial records, and other school records as the commissioner considers necessary and appropriate for the review, analysis, and passing on audit reports.

SECTION 3. This Act takes effect September 1, 1999.

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 Shapiro moved to concur in the House amendment to **SB 875**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**SENATE BILL 824 WITH HOUSE AMENDMENT**

Senator Gallegos called **SB 824** 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 824** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the powers of municipalities that have created certain reinvestment zones.

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

SECTION 1. Section 311.008, Tax Code, is amended to read as follows:

Sec. 311.008. POWERS OF MUNICIPALITY. (a) In this section, "educational facility" includes equipment, real property, and other facilities, including a public school building, that are used or intended to be used jointly by the municipality and an independent school district.

(b) A municipality may exercise any power necessary and convenient to carry out this chapter, including the power to:

(1) cause project plans to be prepared, approve and implement the plans, and otherwise achieve the purposes of the plan;

(2) acquire real property by purchase, condemnation, or other means to implement project plans and sell that property on the terms and conditions and in the manner it considers advisable;

(3) enter into agreements, including agreements with bondholders, determined by the governing body of the municipality to be necessary or convenient to implement project plans and achieve their purposes, which agreements may include conditions, restrictions, or covenants that run with the land or that by other means regulate or restrict the use of land; and

(4) consistent with the project plan for the zone:

(A) acquire blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed real property or other property in a blighted area or in a federally assisted new community in the zone for the preservation or restoration of

historic sites, beautification or conservation, the provision of public works or public facilities, or other public purposes; [~~or~~]

(B) acquire, construct, reconstruct, or install public works, facilities, or sites or other public improvements, including utilities, streets, street lights, water and sewer facilities, pedestrian malls and walkways, parks, flood and drainage facilities, [~~educational facilities,~~] or parking facilities, but not including educational facilities; or

(C) in a reinvestment zone created on or before September 1, 1999, acquire, construct, or reconstruct educational facilities in the municipality.

(c) [~~(b)~~] The powers authorized by Subsection (b)(2) [~~(a)(2)~~] prevail over any law or municipal charter to the contrary.

(d) [~~(c)~~] A municipality may make available to the public on request financial information regarding the acquisition by the municipality of land in the zone when the municipality acquires the land.

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 Gallegos moved to concur in the House amendment to **SB 824**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE ON HOUSE BILL 3014**

Senator Bernsen 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 3014** 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 3014** 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 Bernsen, Chair; Armbrister, Jackson, Cain, and Lucio.

**CONFERENCE COMMITTEE ON HOUSE BILL 1703**

Senator Madla called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1703** 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 1703** 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 Madla, Chair; Lindsay, Lucio, Nixon, and Gallegos.

**CONFERENCE COMMITTEE ON HOUSE BILL 3328**

Senator Madla called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3328** 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 3328** 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 Madla, Chair; Bivins, Wentworth, Ellis, and Cain.

**(President in Chair)**

**SENATE RESOLUTION 1178**

Senator Ratliff, on behalf of 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 in part, as provided by Senate Rule 12.08, to enable the conference committee appointed to resolve the differences on **SB 840**, relating to the automatic expunction of certain arrest records, to consider and take action on the following matters:

(1) Senate Rule 12.03(2) is suspended to permit the committee to omit the following text, which is not in disagreement:

SECTION 6. This Act takes effect only if a specific appropriation for the implementation of this Act is provided in **HB 1** (General Appropriations Act), Acts of the 76th Legislature, Regular Session, 1999. If no specific appropriation is provided in **HB 1**, the General Appropriations Act, this Act has no effect.

Explanation: This change is necessary to ensure that **SB 840** takes effect by its own terms, rather than taking effect contingent on the existence of certain provisions in the General Appropriations Act.

(2) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add additional text not included in either the house or senate version of the bill to read as follows:

SECTION 6. The Texas Department of Public Safety shall implement the provisions of Chapter 55, Code of Criminal Procedure, as amended by this Act, imposing duties on the department, from funds made available to the department in the General Appropriations Act.

Explanation: This change is necessary to ensure that the Texas Department of Public Safety implements certain changes in law made by **SB 840** using funds appropriated to the department in the General Appropriations Act.

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 7, SB 61, SB 153, SB 155, SB 230, SB 261, SB 338, SB 339, SB 368, SB 376, SB 383, SB 562, SB 607, SB 760, SB 779, SB 830, SB 874, SB 881, SB 964, SB 967, SB 1085, SB 1129, SB 1150, SB 1183, SB 1185, SB 1192, SB 1209, SB 1220, SB 1224, SB 1233, SB 1239, SB 1257, SB 1261, SB 1320, SB 1426, SB 1427, SB 1464, SB 1477, SB 1507, SB 1553, SB 1577, SB 1578, SB 1580, SB 1588, SB 1623, SB 1670, SB 1677, SB 1678, SB 1726, SB 1731, SB 1741, SB 1751, SB 1763, SB 1766, SB 1816, SB 1824, SB 1841, SCR 26, SCR 66, SCR 71, SCR 74, SCR 86, HB 160, HB 618, HB 656, HB 749, HB 817, HB 1014, HB 1049, HB 1052, HB 1102, HB 1324, HB 1511, HB 1852, HB 1907, HB 2274, HB 2317, HB 2337, HB 2388, HB 2421, HB 2441, HB 2456, HB 2511, HB 2513, HB 2514, HB 2526, HB 2537, HB 2538, HB 2573, HB 2760, HB 2787, HB 2800, HB 2862, HB 2894, HB 2977, HB 2990, HB 3084, HB 3191, HB 3197, HB 3230, HB 3249, HB 3272, HB 3276, HB 3333, HB 3340, HB 3407, HB 3425, HB 3433, HB 3446, HB 3481, HB 3492, HB 3598, HB 3642, HB 3741, HB 3828, HB 3832, HB 3836, HB 3847, HCR 268, HCR 293, HCR 302, HCR 304, HCR 305, HCR 308**.

## CONFERENCE COMMITTEE ON HOUSE BILL 485

Senator Madla called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 485** 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 485** 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 Madla, Chair; Nixon, Moncrief, Lindsay, and Lucio.

**(Senator Duncan in Chair)**

## CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1620 ADOPTED

Senator Fraser called from the President's table the Conference Committee Report on **HB 1620**. The Conference Committee Report was filed with the Senate on Thursday, May 27, 1999.

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

**SENATE BILL 1650 WITH HOUSE AMENDMENTS**

Senator Jackson called **SB 1650** from the President's table for consideration of the House amendments to the bill.

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

**Floor Amendment No. 1**

Amend **SB 1650**, in SECTION 4 of the bill, at the end of proposed Article 62.045(a), Code of Criminal Procedure (House Committee Report, page 11, line 2), by adding "In providing written notice under this subsection, the department shall use employees of the department whose duties in providing the notice are in addition to the employee's regular duties."

**Floor Amendment No. 2**

Amend **SB 1650** to strike SECTION 7 (House Committee Report, page 13, line 4).

**Floor Amendment No. 3**

Amend **SB 1650** as follows:

(1) In SECTION 4 of the bill (Committee Printing page 11, line 25) add a new Subsection (e) to Art. 62.045 to read as follows:

(e) An owner of a single-family residential property or the owner's agent has no duty to make a disclosure to a prospective buyer or tenant about registrants under this chapter.

The amendments were read.

Senator Jackson moved to concur in the House amendments to **SB 1650**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE ON HOUSE BILL 1188**

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

The motion prevailed.

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

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Shapiro, Chair; Fraser, Nelson, Armbrister, and Duncan.

## CONFERENCE COMMITTEE ON HOUSE BILL 628

Senator Shapiro 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 628** 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 628** 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 Shapiro, Chair; Jackson, West, Fraser, and Nelson.

## CONFERENCE COMMITTEE ON HOUSE BILL 2553

Senator Ratliff, on behalf of Senator Bivins, 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 2553** 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 2553** 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 Bivins, Chair; Lucio, Sibley, Cain, and Jackson.

**(Senator Ratliff in Chair)**

## CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1865 ADOPTED

Senator West called from the President's table the Conference Committee Report on **HB 1865**. The Conference Committee Report was filed with the Senate on Thursday, May 27, 1999.

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

## SENATE RESOLUTION 1184

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 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 **HB 2954**, relating to the application of the

sunset review process to certain state agencies, to consider and take action on the following matters:

Senate Rule 12.03(4) is suspended to permit the committee to add a section to the bill that amends Section 571.022, Government Code, to read as follows:

SECTION __. TEXAS ETHICS COMMISSION. Section 571.022, Government Code, is amended to read as follows:

Sec. 571.022. SUNSET PROVISION. The commission is subject to review under Chapter 325 (Texas Sunset Act), but is not abolished under that chapter. The commission shall be reviewed during the periods in which state agencies abolished in 2003 [~~2001~~] and every 12th year after that year [~~2001~~] are reviewed.

Explanation: This change is necessary to give the Texas Ethics Commission sufficient time to implement, before the commission undergoes sunset review, a system for the electronic reporting of certain political contributions and political expenditures.

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

Absent-excused: Luna.

## CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1362 ADOPTED

Senator Ogden called from the President's table the Conference Committee Report on **HB 1362**. The Conference Committee Report was filed with the Senate on Thursday, May 20, 1999.

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

## CONFERENCE COMMITTEE ON HOUSE BILL 143

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 143** 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 143** 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; Madla, Ellis, Moncrief, and Cain.

## SENATE RULE 11.13 SUSPENDED

On motion of Senator Brown and by unanimous consent, Senate Rule 11.13, which states that no Senate committee or conference committee may meet while the Senate is meeting, was suspended to grant the conference committee on **SB 370** permission to meet.

## MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
May 29, 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 106,** Granting Anh N. Pham permission to sue the state and the Mental Health and Mental Retardation Authority of Harris County.

**HCR 249,** Memorializing the U.S. Congress and urging the president, in considering Social Security reform legislation, to refrain from the inclusion of mandatory coverage for employees of previously noncovered state and local governments.

**HCR 311,** Commending Oklahoma State Senator Larry Dickerson and wishing him well.

**HCR 312,** Honoring Paul Koeltzow for his contributions to public education.

**HCR 313,** Instructing the enrolling clerk of the house to make a technical correction in **HB 2022**.

**SCR 79,** Directing certain state agencies to lead an inquiry into youth violence in the State of Texas.
(Amended)

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

**SB 705**
House Conferees: Swinford - Chair/McReynolds/Telford/Turner, Bob/Wohlgemuth

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**HB 597** (Viva-voce vote)
**HB 713** (142 ayes, 2 nays, 1 present, not voting)
**HB 819** (Viva-voce vote)
**HB 869** (Viva-voce vote)
**HB 1291** (Viva-voce vote)
**HB 2130** (Viva-voce vote)
**HB 2145** (Viva-voce vote)

**HB 2224** (Viva-voce vote)
**HB 2611** (Viva-voce vote)
**HB 3693** (143 ayes, 0 nays, 1 present, not voting)
**HB 3757** (Viva-voce vote)
**HB 3778** (Viva-voce vote)
**HB 3799** (140 ayes, 0 nays, 1 present, not voting)
**SB 46** (Viva-voce vote)
**SB 1237** (Viva-voce vote)
**SB 1423** (Viva-voce vote)
**SB 1525** (Viva-voce vote)

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

**HB 1984** (Viva-voce vote)

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

## HOUSE BILL 1799 RECOMMITTED

On motion of Senator Armbrister and by unanimous consent, the Conference Committee Report on **HB 1799** was recommitted to the conference committee.

**(Senator Armbrister in Chair)**

## BILLS AND RESOLUTIONS SIGNED

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

**SB 294, SB 469, SB 539, SB 609, SB 639, SB 673, SB 724, SB 773, SB 983, SB 984, SB 1031, SB 1131, SB 1133, SB 1232, SCR 24, SCR 60, SCR 61.**

## MOTION TO ADJOURN

On motion of Senator Truan and by unanimous consent, the Senate at 3:40 p.m. agreed to adjourn, upon receipt of Messages from the House, Conference Committee Reports, and the signing of bills and resolutions, in memory of Roy P. Benavidez of El Campo and the Honorable William T. Moore of Bryan, until 2:00 p.m. tomorrow.

## MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
May 29, 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:

**SCR 44,** Recognizing March 22, 1999, as La Mafia Day at the Capitol.

**SCR 87,** In memory of Kevin Phillip Roberts.

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**HB 211** (141 ayes, 0 nays, 1 present, not voting)
**HB 1104** (144 ayes, 0 nays, 1 present, not voting)
**HB 1223** (141 ayes, 0 nays, 1 present, not voting)
**HB 1444** (143 ayes, 0 nays, 1 present, not voting)
**HB 1603** (Viva-voce vote)
**HB 1939** (Viva-voce vote)
**HB 2147** (Viva-voce vote)
**HB 2175** (Viva-voce vote)
**HB 3079** (Viva-voce vote)
**HB 3470** (136 ayes, 2 nays, 1 present, not voting)
**HB 3697** (143 ayes, 0 nays, 1 present, not voting)
**SB 371** (Viva-voce vote)

THE HOUSE HAS RECOMMITTED THE FOLLOWING MEASURES TO CONFERENCE COMMITTEE:

**HB 1799** (Viva-voce vote)

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

## BILLS AND RESOLUTIONS SIGNED

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

**SB 496, SB 510, SB 542, SB 581, SB 751, SB 777, SB 932, SB 1775, SB 1804.**

## CONFERENCE COMMITTEE REPORT ON HOUSE BILL 3697

Senator Sibley 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 3697** have met and had the same

under consideration, and beg to report it back with the recommendation that it do pass.

| | |
|---|---|
| SIBLEY | SIEBERT |
| FRASER | BRIMER |
| ARMBRISTER | EILAND |
| CAIN | BAILEY |
| | RITTER |
| On the part of the Senate | On the part of the House |

The Conference Committee Report was filed with the Secretary of the Senate on Friday, May 28, 1999.

**CONFERENCE COMMITTEE REPORT ON HOUSE BILL 826**

Senator Wentworth submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 826** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

| | |
|---|---|
| WENTWORTH | GREENBERG |
| WEST | WOLENS |
| RATLIFF | LONGORIA |
| CAIN | |
| HARRIS | |
| 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 1230**

Senator Wentworth 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 **SB 1230** have had the same under

consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

| | |
|---|---|
| WENTWORTH | DESHOTEL |
| MADLA | HINOJOSA |
| BROWN | JIM SOLIS |
| HARRIS | TILLERY |
| ELLIS | THOMPSON |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to the procedures governing the prosecution and administration of misdemeanor offenses in the jurisdiction of the justice and municipal courts.

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

SECTION 1. Article 2.07, Code of Criminal Procedure, is amended by adding Subsection (g) to read as follows:

(g) An attorney appointed under Subsection (a) to perform the duties of the office of an attorney for the state in a justice or municipal court may be paid a reasonable fee for performing those duties.

SECTION 2. Article 4.12, Code of Criminal Procedure, is amended to read as follows:

Art. 4.12. MISDEMEANOR CASES; PRECINCT IN WHICH DEFENDANT TO BE TRIED IN JUSTICE COURT. (a) Except as otherwise provided by this article, a [~~A~~] misdemeanor case to be tried in justice court shall be tried:

(1) in the precinct in which the offense was committed;

(2) in the precinct[~~, or~~] in which the defendant or any of the defendants reside; or

(3) [~~, or,~~] with the written consent of the state [~~State~~] and each defendant or the defendant's [~~his~~] attorney, in any other precinct within the county.

(b) In [~~; provided that in~~] any misdemeanor case in which the offense was committed in a precinct where there is no qualified justice [~~precinct~~] court, then trial shall be held:

(1) [~~had~~] in the next adjacent precinct in the same county which has [~~may have~~] a duly qualified justice [~~precinct~~] court; or

(2) [~~, or~~] in the precinct in which the defendant may reside.

(c) In[~~; provided that in~~] any [~~such~~] misdemeanor case in which each justice [~~, upon disqualification for any reason of all justices~~] of the peace in the precinct where the offense was committed is disqualified for any reason, such case may be tried in the next adjoining precinct in the same county[;] having a duly qualified justice of the peace.

SECTION 3. Article 43.09(k), Code of Criminal Procedure, is amended to read as follows:

(k) A defendant is considered to have discharged $100 [~~$50~~] of fines or costs for each eight hours of community service performed under Subsection (f) of this article.

SECTION 4. Article 44.181(a), Code of Criminal Procedure, is amended to read as follows:

(a) A court conducting a trial de novo based on an appeal from a justice or municipal court may [~~not~~] dismiss the case because of a defect in the complaint only if the defendant objected to the defect before the trial began in the justice or municipal court.

SECTION 5. The heading to Chapter 45, Code of Criminal Procedure, is amended to read as follows:

CHAPTER FORTY-FIVE. JUSTICE AND MUNICIPAL [~~CORPORATION~~] COURTS

SECTION 6. Chapter 45, Code of Criminal Procedure, is amended by adding a new Subchapter A to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

Art. 45.001. OBJECTIVES OF CHAPTER. The purpose of this chapter is to establish procedures for processing cases that come within the criminal jurisdiction of the justice courts and municipal courts. This chapter is intended and shall be construed to achieve the following objectives:

(1) to provide fair notice to a person appearing in a criminal proceeding before a justice or municipal court and a meaningful opportunity for that person to be heard;

(2) to ensure appropriate dignity in court procedure without undue formalism;

(3) to promote adherence to rules with sufficient flexibility to serve the ends of justice; and

(4) to process cases without unnecessary expense or delay.

Art. 45.002. APPLICATION OF CHAPTER. Criminal proceedings in the justice and municipal courts shall be conducted in accordance with this chapter, including any other rules of procedure specifically made applicable to those proceedings by this chapter. If this chapter does not provide a rule of procedure governing any aspect of a case, the justice or judge shall apply the other general provisions of this code to the extent necessary to achieve the objectives of this chapter.

Art. 45.003. DEFINITION FOR CERTAIN PROSECUTIONS. For purposes of dismissing a charge under Section 502.407 or 548.605, Transportation Code, "day" does not include Saturday, Sunday, or a legal holiday.

SECTION 7. The articles of Chapter 45, Code of Criminal Procedure, added or redesignated by this Act as Articles 45.011 through 45.053, Code of Criminal Procedure, are designated as Subchapter B of Chapter 45, Code of Criminal Procedure, and a heading is added to that subchapter to read as follows:

SUBCHAPTER B. PROCEDURES FOR JUSTICE AND MUNICIPAL COURTS

SECTION 8. Article 45.38, Code of Criminal Procedure, is redesignated as Article 45.011 and amended to read as follows:

Art. 45.011 [~~45.38~~]. RULES OF EVIDENCE. The rules of evidence that [~~which~~] govern the trials of criminal actions in the district court [~~shall~~] apply to a criminal proceeding [~~such actions~~] in a justice or municipal court [~~courts~~].

SECTION 9. Article 45.021, Code of Criminal Procedure, is redesignated as Article 45.012 and amended to read as follows:

Art. 45.012 [~~45.021~~]. ELECTRONICALLY CREATED RECORDS. (a) Notwithstanding any other provision of law, a document that is issued or maintained by a justice or municipal court or a notice or a citation issued by a law enforcement officer may be created by electronic means, including optical imaging, optical disk, or other electronic reproduction technique that does not permit changes, additions, or deletions to the originally created document.

(b) The court may use electronic means to:

(1) produce a document required by law to be written; [~~or~~]

(2) record an instrument, paper, or notice that is permitted or required by law to be recorded or filed; or

(3) maintain a docket.

(c) The court shall maintain original documents as provided by law.

(d) An electronically recorded judgment has the same force and effect as a written signed judgment.

(e) A record created by electronic means is an original record or a certification of the original record.

(f) [~~(e)~~] A printed copy of an optical image of the original record printed from an optical disk system is an accurate copy of the original record.

(g) A justice or municipal court shall have a court seal, the impression of which must be attached to all papers issued out of the court except subpoenas, and which must be used to authenticate the official acts of the clerk and of the recorder. A court seal may be created by electronic means, including optical imaging, optical disk, or other electronic reproduction technique that does not permit changes, additions, or deletions to an original document created by the same type of system.

SECTION 10. Subchapter B, Chapter 45, Code of Criminal Procedure, as designated by this Act, is amended by adding Article 45.013 to read as follows:

Art. 45.013. FILING WITH CLERK BY MAIL. (a) Notwithstanding any other law, for the purposes of this chapter a document is considered timely filed with the clerk of a court if:

(1) the document is deposited with the United States Postal Service in a first class postage prepaid envelope properly addressed to the clerk on or before the date the document is required to be filed with the clerk; and

(2) the clerk receives the document not later than the 10th day after the date the document is required to be filed with the clerk.

(b) A legible postmark affixed by the United States Postal Service is prima facie evidence of the date the document is deposited with the United States Postal Service.

(c) In this article, "day" does not include Saturday, Sunday, or a legal holiday.

SECTION 11. Article 45.18, Code of Criminal Procedure, is redesignated as Article 45.014 and amended to read as follows:

Art. 45.014 [~~45.18~~]. WARRANT OF ARREST [~~SHALL ISSUE~~]. (a) When a sworn complaint or affidavit based on probable cause has been filed before the justice or municipal court [~~the requirements of the preceding Article have been complied with~~], the justice or judge may [~~shall~~] issue a warrant for the arrest of the accused and deliver the same to the proper officer to be executed.

(b) The warrant is sufficient if:

(1) it is issued in the name of "The State of Texas";

(2) it is directed to the proper peace officer or some other person specifically named in the warrant;

(3) it includes a command that the body of the accused be taken, and brought before the authority issuing the warrant, at the time and place stated in the warrant;

(4) it states the name of the person whose arrest is ordered, if known, or if not known, it describes the person as in the complaint;

(5) it states that the person is accused of some offense against the laws of this state, naming the offense; and

(6) it is signed by the justice or judge, naming the office of the justice or judge in the body of the warrant or in connection with the signature of the justice or judge.

(c) Chapter 15 applies to a warrant of arrest issued under this article, except as inconsistent or in conflict with this chapter.

SECTION 12. Article 45.43, Code of Criminal Procedure, is redesignated as Article 45.015 and amended to read as follows:

Art. 45.015 [~~45.43~~]. DEFENDANT PLACED IN JAIL. Whenever, by the provisions of this title, the peace officer is authorized to retain a defendant in custody, the peace officer [~~he~~] may place the defendant [~~him~~] in jail in accordance with this code or other law [~~or any other place where he can be safely kept~~].

SECTION 13. Article 45.41, Code of Criminal Procedure, is redesignated as Article 45.016 and amended to read as follows:

Art. 45.016 [~~45.41~~]. [~~DEFENDANT TO GIVE~~] BAIL. The [~~In case of adjournment, the~~] justice or judge may [~~shall~~] require the defendant to give bail to secure the defendant's [~~for his~~] appearance in accordance with this code. If the defendant [~~he~~] fails to give bail, the defendant [~~he~~] may be held in custody.

SECTION 14. Article 45.13, Code of Criminal Procedure, is redesignated as Article 45.017 and amended to read as follows:

Art. 45.017 [~~45.13~~]. CRIMINAL DOCKET. (a) The justice or judge of each court, or, if directed by the justice or judge, the clerk of the court, [~~Each justice of the peace and each municipal court judge~~] shall keep a docket containing the following information [~~in which he shall enter the proceedings in each trial had before him, which docket shall show~~]:

(1) the [~~1. The~~] style and file number of each criminal [~~the~~] action;

(2) the [~~2. The~~] nature of the offense charged;

(3) the plea offered by the defendant and the date the plea was entered;

(4) the [~~3. The~~] date the warrant, if any, was issued and the return made thereon;

(5) the date [~~4. The time when~~] the examination or trial was held [~~had~~], and if a trial was held, whether it was by a jury or by the justice or judge [~~himself~~];

(6) the [~~5. The~~] verdict of the jury, if any, and the date of the verdict;

(7) the [~~6. The~~] judgment and sentence of the court, and the date each was given;

(8) the motion [~~7. Motion~~] for new trial, if any, and the decision thereon; and

(9) whether [~~8. If~~] an appeal was taken and the date of that action[~~; and~~

[~~9. The time when, and the manner in which, the judgment and sentence was enforced~~].

(b) The information in the docket may be processed and stored by the use of electronic data processing equipment, at the discretion of the justice of the peace or the municipal court judge.

SECTION 15. Subchapter B, Chapter 45, Code of Criminal Procedure, as designated by this Act, is amended by adding Article 45.018 to read as follows:

Art. 45.018. COMPLAINT. (a) For purposes of this chapter, a complaint is a sworn allegation charging the accused with the commission of an offense.

(b) A defendant is entitled to notice of a complaint against the defendant not later than the day before the date of any proceeding in the prosecution of the defendant under the complaint. The defendant may waive the right to notice granted by this subsection.

SECTION 16. Article 45.17, Code of Criminal Procedure, is redesignated as Article 45.019 and amended to read 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.

SECTION 17. Article 45.37, Code of Criminal Procedure, is redesignated as Article 45.020 and amended to read as follows:

Art. 45.020 [~~45.37~~]. APPEARANCE [~~MAY APPEAR~~] BY COUNSEL. (a) The defendant has a right to appear by counsel as in all other cases.

(b) Not more than one counsel shall conduct either the prosecution or defense. State's counsel may open and conclude the argument.

SECTION 18. Article 45.33, Code of Criminal Procedure, is redesignated as Article 45.021 and amended to read 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.~~]

SECTION 19. Article 45.331, Code of Criminal Procedure, is redesignated as Article 45.0215 and amended to read as follows:

Art. 45.0215 [~~45.331~~]. PLEA BY MINOR AND APPEARANCE OF PARENT. (a) If a defendant is younger than 17 years of age and has not had the disabilities of minority removed, the judge or justice [~~court~~]:

(1) must take the defendant's plea in open court; and

(2) shall issue a summons to compel the defendant's parent, guardian, or managing conservator to be present during:

(A) the taking of the defendant's plea; and

(B) all other proceedings relating to the case.

(b) If the court is unable to secure the appearance of the defendant's parent, guardian, or managing conservator by issuance of a summons, the court may, without the defendant's parent, guardian, or managing conservator present, take the defendant's plea and proceed against the defendant.

(c) If the defendant resides in a county other than the county in which the alleged offense occurred, the defendant may, with leave of the judge of the court of original jurisdiction [~~court~~], enter the plea, including a plea under Article 45.052 [~~45.55~~], before a judge [~~justice~~] in the county in which the defendant resides.

SECTION 20. Article 45.34, Code of Criminal Procedure, is redesignated as Article 45.022 and amended to read as follows:

Art. 45.022 [~~45.34~~]. PLEA OF GUILTY OR NOLO CONTENDERE. Proof as to the offense may be heard upon a plea of guilty or [~~and~~] a plea of nolo contendere and the punishment assessed by the court [~~or jury~~].

SECTION 21. Article 45.31, Code of Criminal Procedure, is redesignated as Article 45.023 and amended to read as follows:

Art. 45.023 [~~45.31~~]. DEFENDANT'S PLEA [~~DEFENDANT SHALL PLEAD~~]. After the jury is impaneled, or after the defendant has waived trial by jury, the defendant may:

(1) plead guilty or not guilty;

(2) [~~or may~~] enter a plea of nolo contendere;[~~,~~] or

(3) enter the special plea of double jeopardy as described by Article 27.05 [~~named in the succeeding Article~~].

SECTION 22. Article 45.35, Code of Criminal Procedure, is redesignated as Article 45.024 and amended to read as follows:

Art. 45.024 [~~45.35~~]. DEFENDANT'S REFUSAL [~~IF DEFENDANT REFUSES~~] TO PLEAD. The justice or judge shall enter a plea of not guilty if the defendant refuses to plead.

SECTION 23. Article 45.24, Code of Criminal Procedure, is redesignated as Article 45.025 and amended to read as follows:

Art. 45.025 [~~45.24~~]. DEFENDANT MAY WAIVE JURY. The accused may waive a trial by jury in writing. If the defendant waives a trial by jury[~~; and in such case~~], the justice or judge shall hear and determine the cause without a jury.

SECTION 24. Article 45.251, Code of Criminal Procedure, is redesignated as Article 45.026 and amended to read as follows:

Art. 45.026 [~~45.251~~]. [~~DEMAND FOR~~] JURY TRIAL [~~IN JUSTICE COURT OR MUNICIPAL COURT~~]; FAILURE TO APPEAR. (a) A justice or municipal court may order a party who does not waive [~~demands~~] a jury trial in a justice or municipal court and who fails to appear for the trial to pay the costs incurred for impaneling the jury.

(b) The justice or municipal court may release a party from the obligation to pay costs under this section for good cause.

(c) An order issued by a justice or municipal court under this section may be enforced by contempt as prescribed by Section 21.002(c), Government Code.

SECTION 25. Article 45.25, Code of Criminal Procedure, is redesignated as Article 45.027 and amended to read as follows:

Art. 45.027 [~~45.25~~]. JURY SUMMONED. (a) If the accused does not waive a trial by jury, the justice or judge shall issue a writ commanding the proper officer to summon [~~forthwith~~] a venire from which six qualified persons shall be selected to serve as jurors in the case.

(b) The [~~Said~~] jurors when so summoned shall remain in attendance as jurors in all cases that may come up for hearing until discharged by the court.

(c) Any person so summoned who fails to attend may be fined an amount not to exceed [~~exceeding~~] $100 for contempt.

SECTION 26. Article 45.29, Code of Criminal Procedure, is redesignated as Article 45.028 and amended to read as follows:

Art. 45.028 [~~45.29~~]. OTHER JURORS SUMMONED. If, from challenges or any other cause, a sufficient number of jurors are not in attendance, the justice or judge shall order the proper officer to summon a sufficient number of qualified persons to form the jury.

SECTION 27. Article 45.28, Code of Criminal Procedure, is redesignated as Article 45.029 and amended to read as follows:

Art. 45.029 [~~45.28~~]. PEREMPTORY CHALLENGES [~~CHALLENGE OF JURORS~~]. In all jury trials in a [~~the~~] justice or municipal court, the state [~~State~~] and each defendant in the case is [~~shall be~~] entitled to three peremptory challenges[~~, and also to any number of challenges for cause, which cause shall be judged of by the justice~~].

SECTION 28. Article 45.30, Code of Criminal Procedure, is redesignated as Article 45.030 and amended to read as follows:

Art. 45.030 [~~45.30~~]. FORMATION OF [~~OATH TO~~] JURY. The justice or judge shall form the jury and administer the appropriate [~~following~~] oath in accordance with Chapter 35 [~~to the jury: "Each of you do solemnly swear that you will well and truly try the cause about to be submitted to you and a true verdict render therein, according to the law and the evidence, so help you God"~~].

SECTION 29. Article 45.36, Code of Criminal Procedure, is redesignated as Article 45.031 and amended to read as follows:

Art. 45.031 [~~45.36~~]. COUNSEL FOR STATE NOT PRESENT [~~WITNESSES EXAMINED BY WHOM~~]. If [~~The justice shall examine the witnesses if~~] the state [~~State~~] is not represented by counsel when the case is called for trial, the justice or judge may:

(1) postpone the trial to a date certain;

(2) appoint an attorney pro tem as provided by this code to represent the state; or

(3) proceed to trial.

SECTION 30. Article 45.031, Code of Criminal Procedure, is redesignated as Article 45.032 and amended to read as follows:

Art. 45.032 [~~45.031~~]. DIRECTED VERDICT. If, upon the trial of a case in a justice or municipal [~~corporation~~] court, [~~there is a material variance between the allegations in the complaint and the proof offered by the state, or~~] the state fails [~~has failed~~] to prove a prima facie case of the offense alleged in the complaint, the defendant is entitled to a directed verdict of "not guilty." [~~guilty" as in any other criminal case.~~]

SECTION 31. Subchapter B, Chapter 45, Code of Criminal Procedure, as designated by this Act, is amended by adding Article 45.033 to read 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.

SECTION 32. Article 45.39, Code of Criminal Procedure, is redesignated as Article 45.034 and amended to read as follows:

Art. 45.034 [~~45.39~~]. JURY KEPT TOGETHER. The jury shall retire in charge of an officer when the cause is submitted to them, and be kept together until they agree to a verdict, [~~or~~] are discharged, or the court recesses.

SECTION 33. Article 45.40, Code of Criminal Procedure, is redesignated as Article 45.035 and amended to read as follows:

Art. 45.035 [~~45.40~~]. MISTRIAL. A jury shall be discharged if it fails to agree to a verdict after being kept together a reasonable time. If a jury is discharged because it fails to agree to a verdict, [~~there be time left on the same day, another jury may be impaneled to try the cause, or~~] the justice or judge may [~~adjourn for not more than 30 days and again~~] impanel another [~~a~~] jury as soon as practicable to try such cause.

SECTION 34. Article 45.42, Code of Criminal Procedure, is redesignated as Article 45.036 and amended to read as follows:

Art. 45.036 [~~45.42~~]. VERDICT. (a) When the jury has agreed on [~~upon~~] a verdict, the jury [~~it~~] shall bring the verdict [~~same~~] into court.

(b) The [~~; and the~~] justice or judge shall see that the verdict [~~it~~] is in proper form and shall [~~enter it upon his docket and~~] render the proper judgment and sentence on the verdict [~~thereon~~].

SECTION 35. Article 45.45, Code of Criminal Procedure, is redesignated as Article 45.037 and amended to read as follows:

Art. 45.037 [~~45.45~~]. MOTION FOR NEW TRIAL. A motion [~~An application~~] for a new trial must be made within one day after the rendition of judgment and sentence, and not afterward [~~; and the execution of the judgment and sentence shall not be stayed until a new trial has been granted~~].

SECTION 36. Article 45.44, Code of Criminal Procedure, is redesignated as Article 45.038 and amended to read as follows:

Art. 45.038 [~~45.44~~]. NEW TRIAL GRANTED. (a) Not later than the 10th day after the date that the judgment is entered, a [~~A~~] justice or judge may, for good cause shown, grant the defendant a new trial, whenever the justice or judge [~~he~~] considers that justice has not been done the defendant in the trial of the [~~such~~] case.

(b) If a motion for a new trial is not granted before the 11th day after the date that the judgment is entered, the motion shall be considered denied.

SECTION 37. Article 45.46, Code of Criminal Procedure, is redesignated as Article 45.039 and amended to read as follows:

Art. 45.039 [~~45.46~~]. ONLY ONE NEW TRIAL GRANTED. Not more than one new trial shall be granted the defendant in the same case. When a new trial has been granted, the justice or judge shall proceed, as soon as practicable, to try the case again.

SECTION 38. Article 45.47, Code of Criminal Procedure, is redesignated as Article 45.040 and amended to read as follows:

Art. 45.040 [~~45.47~~]. STATE NOT ENTITLED TO NEW TRIAL. In no case shall the state [~~State~~] be entitled to a new trial.

SECTION 39. Article 45.50, Code of Criminal Procedure, is redesignated as Article 45.041 and amended to read as follows:

Art. 45.041 [~~45.50~~]. [~~THE~~] JUDGMENT. (a) The judgment and sentence, in case of conviction in a criminal action before a justice of the peace or municipal court judge, shall be that the defendant pay the amount of the fine and costs to the state.

(b) The justice or judge may direct the defendant:

(1) to pay:

(A) the entire fine and costs when sentence is pronounced; [~~or~~]

(B) [~~(2) to pay~~] the entire fine and costs at some later date; or

(C) [~~(3) to pay~~] a specified portion of the fine and costs at designated intervals;

(2) if applicable, to make restitution to any victim of the offense in an amount not to exceed $500; and

(3) to satisfy any other sanction authorized by law.

(c) The justice or judge shall credit the defendant for time served in jail as provided by Article 42.03. The credit shall be applied to the amount of the fine and costs at the rate provided by Article 45.048.

(d) All judgments, sentences, and final orders of the justice or judge shall be rendered in open court.

SECTION 40. Article 45.10, Code of Criminal Procedure, is redesignated as Article 45.042 and amended to read as follows:

Art. 45.042 [~~45.10~~]. APPEAL. (a) Appeals from a justice or municipal court, including appeals from final judgments in bond forfeiture proceedings, shall be heard by the county court except in cases where the county court has no jurisdiction, in which counties such appeals shall be heard by the proper court.

(b) Unless the appeal is taken from a municipal court of record and the appeal is based on error reflected in the record, the trial shall be de novo [~~in the proper court. Said appeals shall be governed by the rules of practice and procedure for appeals from justice courts to the county court, as far as applicable~~].

(c) In an appeal from the judgment and sentence of a justice or municipal court, if the defendant is in custody, the defendant is to be committed to jail unless the defendant gives bail.

SECTION 41. Subchapter B, Chapter 45, Code of Criminal Procedure, as designated by this Act, is amended by adding Article 45.0425 to read as follows:

Art. 45.0425. APPEAL BOND. (a) If the court from whose judgment and sentence the appeal is taken is in session, the court must approve the bail. The amount of a bail bond may not be less than two times the amount of the fine and costs adjudged against the defendant, payable to the State of Texas. The bail may not in any case be for a sum less than $50. If the appeal bond otherwise meets the requirements of this code, the court without requiring a court appearance by the defendant shall approve the appeal bond in the amount the court under Article 27.14(b) notified the defendant would be approved.

(b) An appeal bond shall recite that in the cause the defendant was convicted and has appealed and be conditioned that the defendant shall make the defendant's personal appearance before the court to which the appeal is taken instanter, if the court is in session, or, if the court is not in session, at its next regular term, stating the time and place of that session, and there remain from day to day and term to term, and answer in the cause in the court.

SECTION 42. Article 44.14, Code of Criminal Procedure, is redesignated as Article 45.0426 of Subchapter B, Chapter 45, Code of Criminal Procedure, as designated by this Act, and amended to read as follows:

Art. 45.0426 [~~44.14~~]. FILING BOND PERFECTS APPEAL. (a) When [~~In appeals from justice and municipal courts, when~~] the appeal bond [~~provided for in the preceding Article~~] has been filed with the justice or judge who tried the case not later than the 10th day after the date the judgment was entered, the appeal in such case shall be held to be perfected.

(b) If an appeal bond is not timely filed, the appellate [~~appeal~~] court does not have jurisdiction over the case and shall remand the case to the justice or municipal court for execution of the sentence.

(c) An [~~No~~] appeal may not [~~shall~~] be dismissed because the defendant failed to give notice of appeal in open court. An appeal by the defendant or the state may not be dismissed on account of any defect in the transcript.

SECTION 43. Article 45.48, Code of Criminal Procedure, is redesignated as Article 45.043 and amended to read as follows:

Art. 45.043 [~~45.48~~]. EFFECT OF APPEAL. When a defendant files the appeal bond required by law with the justice or municipal court, all further proceedings [~~proceeding~~] in the case in the justice or municipal court shall cease.

SECTION 44. Article 45.231, Code of Criminal Procedure, is redesignated as Article 45.044 and amended to read as follows:

Art. 45.044 [~~45.231~~]. FORFEITURE OF CASH BOND IN SATISFACTION OF FINE. (a) A justice or judge may enter a judgment of conviction and forfeit a cash bond posted by the defendant in satisfaction of the defendant's fine and cost if the defendant:

(1) has entered a written and signed plea of nolo contendere and a waiver of jury trial; and

(2) fails to appear according to the terms of the defendant's release.

(b) A justice or judge who enters a judgment of conviction and forfeiture under Subsection (a) of this article shall immediately notify the defendant in writing, by regular mail addressed to the defendant at the defendant's last known address, that:

(1) a judgment of conviction and forfeiture of bond was entered against the defendant on a date certain and the forfeiture satisfies the defendant's fine and costs in the case; and

(2) the defendant has a right to a new trial in the case if the defendant applies for the new trial not later than the 10th day after the date of judgment and forfeiture.

(c) Notwithstanding Article 45.037 [~~45.45~~] of this code, the defendant may file a motion [~~apply~~] for a new trial within the period provided by Subsection (b) of this article, and the court shall grant the motion [~~application~~] if the motion [~~application~~] is made within that [~~the~~] period. On the new trial, the court shall permit the defendant to withdraw the previously entered plea of nolo contendere and waiver of jury trial.

SECTION 45. Article 45.51, Code of Criminal Procedure, is redesignated as Article 45.045 and amended to read as follows:

Art. 45.045 [~~45.51~~]. CAPIAS PRO FINE. [~~(a)~~] If the defendant is not in custody when the judgment is rendered or if the defendant fails to satisfy the judgment according to its terms, the court may order a capias pro fine issued for the defendant's [~~his~~] arrest. The capias pro fine shall state the amount of the judgment and sentence, and command the appropriate peace officer [~~sheriff~~] to bring the defendant before the court or place the defendant [~~him~~] in jail until the defendant [~~he~~] can be brought before the court.

[~~(b) If the defendant escapes from custody after judgment is rendered, a capias shall issue for his arrest and confinement until he is legally discharged.~~]

SECTION 46. Article 45.52, Code of Criminal Procedure, is redesignated as Article 45.046 and amended to read 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.~~]

SECTION 47. Subchapter B, Chapter 45, Code of Criminal Procedure, as designated by this Act, is amended by adding Article 45.047 to read as follows:

Art. 45.047. CIVIL COLLECTION OF FINES AFTER JUDGMENT. If after a judgment and sentence is entered the defendant defaults in payment of a fine, the justice or judge 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.

SECTION 48. Article 45.53, Code of Criminal Procedure, is redesignated as Article 45.048 and amended to read as follows:

Art. 45.048 [~~45.53~~]. DISCHARGED FROM JAIL. A defendant placed in jail on account of failure to pay the fine and costs shall [~~can~~] be discharged on habeas corpus by showing that the defendant:

(1) [~~1. That he~~] is too poor to pay the fine and costs; or [~~and~~]

(2) [~~2. That he~~] has remained in jail a sufficient length of time to satisfy the fine and costs, at the rate of not less than $100 [~~$15~~] for each day or part of a day of jail time served.

SECTION 49. Articles 45.521 and 45.522, Code of Criminal Procedure, are redesignated as Articles 45.049 and 45.050 and amended to read as follows:

Art. 45.049 [~~45.521~~]. COMMUNITY SERVICE IN SATISFACTION OF FINE OR COSTS. (a) A justice or judge may require a defendant who fails to pay a previously assessed fine or costs, or who is determined by the court to have insufficient resources or income to pay a fine or costs, to discharge all or part of the fine or costs by performing community service. A defendant may discharge an obligation to perform community service under this article by paying at any time the fine and costs assessed.

(b) In the justice's or judge's order requiring a defendant to participate in community service work under this article, the justice or judge must specify[~~:~~]

[~~(1)~~] the number of hours the defendant is required to work[~~;~~]

[~~(2) the entity or organization for which the defendant is required to work; and~~

[~~(3) the project on which the defendant is required to work~~].

(c) The justice or judge may order the defendant to perform community service work under this article only for a governmental entity or a nonprofit organization that provides services to the general public that enhance social welfare and the general well-being of the community. A governmental entity or nonprofit organization that accepts a defendant under this article to perform community service must agree to supervise the defendant in the performance of the defendant's work and report on the defendant's work to the justice or judge who ordered the community service.

(d) A justice or judge may not order a defendant to perform more than 16 hours per week of community service under this article unless the justice or judge determines that requiring the defendant to work additional hours does not work a hardship on the defendant or the defendant's dependents.

(e) A defendant is considered to have discharged $100 [~~$50~~] of fines or costs for each eight hours of community service performed under this article.

(f) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, justice of the peace, municipal court judge, or officer or employee of a political subdivision other than a county is not liable for damages arising from an act or failure to act in connection with manual labor performed by a defendant under this article if the act or failure to act:

(1) was performed pursuant to court order; and

(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

Art. 45.050 [~~45.522~~]. FAILURE TO PAY FINE; CONTEMPT: JUVENILES. (a) A justice court or municipal court may not order the confinement of a person who is a child for the purposes of Title 3, Family Code, for the failure to pay all or any part of a fine or costs imposed for the conviction of an offense punishable by fine only.

(b) If a person who is a child under Section 51.02, Family Code, [~~Section 51.03(a)(3), Family Code, and the procedures for the adjudication of a child for delinquent conduct apply to a child who~~] fails to obey an order of a justice or municipal court under circumstances that would constitute contempt of court, the justice or municipal court has jurisdiction to:

(1) hold the child in contempt of the justice or municipal court order as provided by Section 52.027(h), Family Code; or

(2) refer the child to the appropriate juvenile court for delinquent conduct for contempt of the justice or municipal court order.

SECTION 50. Article 45.54, Code of Criminal Procedure, is redesignated as Article 45.051 and amended to read as follows:

Art. 45.051 [~~45.54~~]. SUSPENSION OF SENTENCE AND DEFERRAL OF FINAL DISPOSITION. (a) [~~(1)~~] On a plea of guilty or nolo contendere by a defendant or on a finding of guilt in a misdemeanor case punishable by fine only and payment of all court costs, the justice may defer further proceedings without entering an adjudication of guilt and place the defendant on probation for a period not to exceed 180 days. [~~This article does not apply to a misdemeanor case disposed of by Section 143A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), or a serious traffic violation as defined in Section 3(26), Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes).~~

[~~(2) During the deferral period, the justice shall require the defendant to successfully complete a Central Education Agency-approved driving safety course, if the offense alleged is an offense involving the operation of a motor vehicle, other than a commercial motor vehicle, as defined in Subdivision (6), Section 3, Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes), and the defendant:~~

[~~(A) has completed an approved driving safety course within the preceding 12 months; or~~

[~~(B) is a first-time offender who elects deferred adjudication.~~]

(b) [~~(3)~~] During the [~~said~~] deferral period, the justice may require the defendant to:

(1) [~~(a)~~] post a bond in the amount of the fine assessed to secure payment of the fine;

(2) [~~(b)~~] pay restitution to the victim of the offense in an amount not to exceed the fine assessed;

(3) [~~(c)~~] submit to professional counseling;

(4) submit to diagnostic testing for alcohol or a controlled substance or drug;

(5) submit to a psychosocial assessment;

(6) participate in an alcohol or drug abuse treatment or education program;

(7) pay the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court as court costs; and

(8) [~~(d)~~] comply with any other reasonable condition[~~; and~~

[~~(e) require the defendant to successfully complete a Central Education Agency approved driving safety course, if:~~

[~~(1) the offense alleged is an offense involving the operation of a motor vehicle, other than a commercial motor vehicle, as defined in Subdivision (6),~~

~~Section 3, Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes); and~~

[~~(2) the defendant has not completed an approved driving safety course within the preceding 12 months~~].

(c) [~~(4)~~] At the conclusion of the deferral period, if the defendant presents satisfactory evidence that he has complied with the requirements imposed, the justice shall dismiss the complaint, and it shall be clearly noted in the docket that the complaint is dismissed and that there is not a final conviction. Otherwise, the justice may proceed with an adjudication of guilt. After an adjudication of guilt, the justice may reduce the fine assessed or may then impose the fine assessed, less any portion of the assessed fine that has been paid. If the complaint is dismissed, a special expense not to exceed the amount of the fine assessed may be imposed.

(d) [~~(5)~~] If at the conclusion of the deferral period the defendant does not present satisfactory evidence that the defendant complied with the requirements imposed, the justice may impose the fine assessed or impose a lesser fine. The imposition of the fine or lesser fine constitutes a final conviction of the defendant.

(e) [~~(6)~~] Records relating to a complaint dismissed as provided by this article may be expunged under Article 55.01 of this code. If a complaint is dismissed under this article, there is not a final conviction and the complaint may not be used against the person for any purpose.

SECTION 51. Subchapter B, Chapter 45, Code of Criminal Procedure, as designated by this Act, is amended by adding Article 45.0511 to read as follows:

Art. 45.0511. DEFERRED DISPOSITION PROCEDURES APPLICABLE TO TRAFFIC OFFENSES. (a) This article applies to an alleged offense involving the operation of a motor vehicle other than a commercial motor vehicle, as defined by Section 522.003, Transportation Code, and supplements Article 45.051.

(b) During the deferral period under Article 45.051, the justice:

(1) shall require the defendant to successfully complete a driving safety course approved by the Texas Education Agency if the defendant elects deferred disposition and the defendant has not completed an approved driving safety course or motorcycle operator training course, as appropriate, within the preceding 12 months; and

(2) may require the defendant to successfully complete a driving safety course approved by the Texas Education Agency if the defendant has completed an approved driving safety course within the preceding 12 months.

(c) Subsection (b)(1) applies only if:

(1) the person enters a plea in person or in writing of no contest or guilty and, before the answer date on the notice to appear:

(A) presents in person to the court an oral or written request to take a course; or

(B) sends to the court by certified mail, return receipt requested, postmarked on or before the answer date on the notice to appear, a written request to take a course;

(2) the court enters judgment on the person's plea of no contest or guilty at the time the plea is made but defers imposition of the judgment for 180 days;

(3) the person has a Texas driver's license or permit;

(4) the person is charged with an offense to which this article applies, other than speeding 25 miles per hour or more over the posted speed limit;

(5) the person provides evidence of financial responsibility as required by Chapter 601, Transportation Code;

(6) the defendant's driving record as maintained by the Texas Department of Public Safety shows the defendant has not completed an approved driving safety course or motorcycle operator training course, as appropriate, within the 12 months preceding the date of the offense; and

(7) the defendant files an affidavit with the court stating that the person is not taking a course under this section and has not completed a course that is not shown on the person's driving record within the 12 months preceding the date of the offense.

(d) Notwithstanding Subsection (c)(1), on a written motion submitted to the court before the final disposition of the case, the court may grant a request to take a driving safety course or a motorcycle operator training course under this article.

(e) A request to take a driving safety course made at or before the time and at the place at which a person is required to appear in court is an appearance in compliance with the person's promise to appear.

(f) The court may require a person requesting a driving safety course to pay a fee set by the court at an amount of not more than $10, including any other fee authorized by statute or municipal ordinance, to cover the cost of administering this article.

(g) A person who requests but does not take a course is not entitled to a refund of the fee.

(h) Fees collected by a municipal court shall be deposited in the municipal treasury. Fees collected by another court shall be deposited in the county treasury of the county in which the court is located.

(i) If a person requesting a driving safety course fails to furnish evidence of the successful completion of the course to the court, the court shall:

(1) notify the person in writing, mailed to the address appearing on the notice to appear, of that failure; and

(2) require the person to appear at the time and place stated in the notice to show cause why the evidence was not timely submitted to the court.

(j) A person who fails to appear at the time and place stated in the notice commits a misdemeanor punishable as provided by Section 543.009, Transportation Code.

(k) On a person's showing of good cause for failure to furnish evidence to the court, the court may allow an extension of time during which the person may present a uniform certificate of course completion as evidence that the person successfully completed the driving safety course.

(l) When a person complies with Subsection (b) and a uniform certificate of course completion is accepted by the court, the court shall:

(1) remove the judgment and dismiss the charge;

(2) report the fact that the person successfully completed a driving safety course and the date of completion to the Texas Department of Public Safety for inclusion in the person's driving record; and

(3) state in this report whether the course was taken under the procedure provided by this article to provide information necessary to determine eligibility to take a subsequent course under Subsection (b).

(m) The court may dismiss only one charge for each completion of a course.

(n) A charge that is dismissed under this article may not be part of a person's driving record or used for any purpose.

(o) An insurer delivering or issuing for delivery a motor vehicle insurance policy in this state may not cancel or increase the premium charged an insured under the policy because the insured completed a driving safety course or had a charge dismissed under this article.

(p) The court shall advise a person charged with a misdemeanor under Subtitle C, Title 7, Transportation Code, committed while operating a motor vehicle of the

person's right under this article to successfully complete a driving safety course or, if the offense was committed while operating a motorcycle, a motorcycle operator training course. The right to complete a course does not apply to a person charged with a violation of Section 545.066, 545.401, 545.421, 550.022, or 550.023, Transportation Code, or serious traffic violation as defined by Section 522.003, Transportation Code.

SECTION 52. Article 45.55, Code of Criminal Procedure, is redesignated as Article 45.052 to read as follows:

Art. 45.052 [~~45.55~~]. DISMISSAL OF MISDEMEANOR CHARGE ON COMPLETION OF TEEN COURT PROGRAM. (a) A justice or municipal court may defer proceedings against a defendant who is under the age of 18 or enrolled full time in an accredited secondary school in a program leading toward a high school diploma for 90 days if the defendant:

(1) is charged with a misdemeanor punishable by fine only or a violation of a penal ordinance of a political subdivision, including a traffic offense punishable by fine only;

(2) pleads nolo contendere or guilty to the offense in open court with the defendant's parent, guardian, or managing conservator present;

(3) presents to the court an oral or written request to attend a teen court program; and

(4) has not successfully completed a teen court program in the two years preceding the date that the alleged offense occurred.

(b) The teen court program must be approved by the court.

(c) The justice or municipal court shall dismiss the charge at the conclusion of the deferral period if the defendant presents satisfactory evidence that the defendant has successfully completed the teen court program.

(d) A charge dismissed under this article may not be part of the defendant's criminal record or driving record or used for any purpose. However, if the charge was for a traffic offense, the court shall report to the Department of Public Safety that the defendant successfully completed the teen court program and the date of completion for inclusion in the defendant's driving record.

(e) The justice or municipal court may require a person who requests a teen court program to pay a fee not to exceed $10 that is set by the court to cover the costs of administering this article. Fees collected by a municipal court shall be deposited in the municipal treasury. Fees collected by a justice court shall be deposited in the county treasury of the county in which the court is located. A person who requests a teen court program and fails to complete the program is not entitled to a refund of the fee.

(f) A court may transfer a case in which proceedings have been deferred under this section to a court in a contiguous county if the court to which the case is transferred consents. A case may not be transferred unless it is within the jurisdiction of the court to which it is transferred.

(g) In addition to the fee authorized by Subsection (e) of this article, the court may require a child who requests a teen court program to pay a $10 fee to cover the cost to the teen court for performing its duties under this article. The court shall pay the fee to the teen court program, and the teen court program must account to the court for the receipt and disbursal of the fee. A child who pays a fee under this subsection is not entitled to a refund of the fee, regardless of whether the child successfully completes the teen court program.

(h) A justice or municipal court may exempt a defendant for whom proceedings are deferred under this article from the requirement to pay a court cost or fee that is imposed by another statute.

SECTION 53. Article 45.56, Code of Criminal Procedure, is redesignated as Article 45.053 to read as follows:

Art. 45.053 [~~45.56~~]. DISMISSAL OF MISDEMEANOR CHARGE ON COMMITMENT OF CHEMICALLY DEPENDENT PERSON. (a) On a plea of guilty or nolo contendere by a defendant or on a finding of guilt in a misdemeanor case punishable by a fine only, a justice or municipal court may defer further proceedings for 90 days without entering an adjudication of guilt if:

(1) the court finds that the offense resulted from or was related to the defendant's chemical dependency; and

(2) an application for court-ordered treatment of the defendant is filed in accordance with Chapter 462, Health and Safety Code.

(b) At the end of the deferral period, the justice or municipal court shall dismiss the charge if satisfactory evidence is presented that the defendant was committed for and completed court-ordered treatment in accordance with Chapter 462, Health and Safety Code, and it shall be clearly noted in the docket that the complaint is dismissed and that there is not a final conviction.

(c) If at the conclusion of the deferral period satisfactory evidence that the defendant was committed for and completed court-ordered treatment in accordance with Chapter 462, Health and Safety Code, is not presented, the justice or municipal court may impose the fine assessed or impose a lesser fine. The imposition of a fine constitutes a final conviction of the defendant.

(d) Records relating to a complaint dismissed under this article may be expunged under Article 55.01 of this code. If a complaint is dismissed under this article, there is not a final conviction and the complaint may not be used against the person for any purpose.

SECTION 54. Article 45.101, as added by this Act, and Articles 45.102 and 45.103, as redesignated by this Act, are designated as Subchapter C of Chapter 45, Code of Criminal Procedure, and a heading is added to that subchapter to read as follows:

SUBCHAPTER C. PROCEDURES IN JUSTICE COURT

SECTION 55. Subchapter C, Chapter 45, Code of Criminal Procedure, as designated by this Act, is amended by adding Article 45.101 to read as follows:

Art. 45.101. JUSTICE COURT PROSECUTIONS. (a) All prosecutions in a justice court shall be conducted by the county or district attorney or a deputy county or district attorney.

(b) Except as otherwise provided by law, appeals from justice court may be prosecuted by the district attorney or a deputy district attorney with the consent of the county attorney.

SECTION 56. Article 45.21, Code of Criminal Procedure, is redesignated as Article 45.102 and amended to read as follows:

Art. 45.102 [~~45.21~~]. OFFENSES COMMITTED IN ANOTHER COUNTY. Whenever complaint is made before any justice of the peace that a felony has been committed in any other than a county in which the complaint is made, the [~~such~~] justice shall issue a [~~his~~] warrant for the arrest of the accused, directed as in other cases, commanding that the accused be arrested and taken before any magistrate of the county where such felony is alleged to have been committed, forthwith, for examination as in other cases.

SECTION 57. Article 45.15, Code of Criminal Procedure, is redesignated as Article 45.103 and amended to read as follows:

Art. 45.103 [~~45.15~~]. WARRANT WITHOUT COMPLAINT. If [~~Whenever~~] a criminal offense that [~~which~~] a justice of the peace has jurisdiction to try is [~~shall be~~]

committed within the view of the [~~such~~] justice, the justice [~~he~~] may issue a [~~his~~] warrant for the arrest of the offender.

SECTION 58. Articles 45.201, 45.202, and 45.203, as redesignated or added by this Act, are designated as Subchapter D of Chapter 45, Code of Criminal Procedure, and a heading is added to that subchapter to read as follows:

SUBCHAPTER D. PROCEDURES IN MUNICIPAL COURT

SECTION 59. Article 45.03, Code of Criminal Procedure, is redesignated as Article 45.201 and amended to read as follows:

Art. 45.201 [~~45.03~~]. MUNICIPAL PROSECUTIONS. (a) All prosecutions in a municipal court shall be conducted by the city attorney of the municipality [~~such city, town or village,~~] or by a [~~his~~] deputy city attorney.

(b) The county attorney of the county in which the municipality [~~said city, town or village~~] is situated may, if the county attorney [~~he~~] so desires, also represent the state [~~State~~] in such prosecutions. In such cases, the [~~said~~] county attorney is [~~shall~~] not [~~be~~] entitled to receive any fees or other compensation [~~whatever~~] for those [~~said~~] services.

(c) [~~The county attorney shall have no power to dismiss any prosecution pending in said court unless for reasons filed and approved by the judge.~~] With the consent of the county attorney, appeals from municipal court to a county court, county court at law, or any appellate court may be prosecuted by the city attorney or a [~~his~~] deputy city attorney.

(d) It is the primary duty of a municipal prosecutor not to convict, but to see that justice is done.

SECTION 60. Article 45.04, Code of Criminal Procedure, is redesignated as Article 45.202 and amended to read as follows:

Art. 45.202 [~~45.04~~]. SERVICE OF PROCESS. (a) [~~Sec. 1.~~] All process issuing out of a municipal [~~corporation~~] court may be served and shall be served when directed by the court, by a peace officer [~~policeman~~] or marshal of the municipality [~~city, town or village~~] within which it is situated, under the same rules as are provided by law for the service by sheriffs and constables of process issuing out of the justice court, so far as applicable.

(b) [~~Sec. 2.~~] The peace officer [~~policeman~~] or marshal may serve all process issuing out of a municipal [~~corporation~~] court anywhere in the county in which the municipality [~~city, town or village~~] is situated. If the municipality [~~city, town or village~~] is situated in more than one county, the peace officer [~~policeman~~] or marshal may serve the process throughout those counties.

[~~Sec. 3. A defendant is entitled to at least one day's notice of any complaint against him, if such time is demanded.~~]

SECTION 61. Article 45.06, Code of Criminal Procedure, is redesignated as Article 45.203 and amended to read as follows:

Art. 45.203 [~~45.06~~]. COLLECTION OF FINES, COSTS, AND SPECIAL EXPENSES. (a) The governing body of each municipality [~~incorporated city, town or village~~] shall by ordinance prescribe [~~such~~] rules, not inconsistent with any law of this state [~~State~~], as may be proper to enforce the collection of fines imposed by a municipal court. In addition to any other method of enforcement, the municipality may enforce the collection of fines by:

(1) [~~, by~~] execution against the property of the defendant;[~~,~~] or

(2) imprisonment of the defendant.

(b) The governing body of a municipality may[~~, the collection of all fines imposed by such court, and shall also have power to~~] adopt such rules and regulations, not inconsistent with any law of this state, concerning the practice and procedure in the municipal [~~such~~] court as the [~~said~~] governing body may consider [~~deem~~] proper[~~, not inconsistent with any law of this State~~].

(c) The governing body of each municipality may prescribe by ordinance the collection, after due notice, of [~~All such fines;~~] a special expense, not to exceed $25 for the issuance and service of a warrant of arrest for an offense under Section 38.10, Penal Code, or Section 543.009, Transportation Code. Money collected from the special expense [~~under Section 149, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes); and the special expenses described in Article 17.04 dealing with the requisites of a personal bond and a special expense for the issuance and service of a warrant of arrest, after due notice, not to exceed $25,~~] shall be paid into the municipal [~~city~~] treasury for the use and benefit of the municipality [~~city, town or village. The governing body of each incorporated city, town or village may by ordinance authorize a municipal court to collect a special expense for services performed in cases in which the laws of this State require that the case be dismissed because of actions by or on behalf of the defendant which were subsequent to the date of the alleged offense. Such actions are limited to compliance with the provisions of Subsection (a), Section 143A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes). Such special expense shall not exceed the actual expenses incurred for the services or $10, whichever is less~~].

(d) Costs may not be imposed or collected in criminal cases in municipal court by municipal ordinance.

SECTION 62. Article 42.111, Code of Criminal Procedure, is amended to read as follows:

Art. 42.111. DEFERRAL OF PROCEEDINGS IN CASES APPEALED TO COUNTY COURT. If a defendant convicted of a misdemeanor punishable by fine only appeals the conviction to a county court, on the trial in county court the defendant may enter a plea of guilty or nolo contendere to the offense. If the defendant enters a plea of guilty or nolo contendere, the court may defer further proceedings without entering an adjudication of guilt in the same manner as provided for the deferral of proceedings in justice court or municipal court under Article 45.051 [~~45.54~~] of this code. This article does not apply to a misdemeanor case disposed of under Subchapter B, Chapter 543, Transportation Code [~~by Section 143A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes)~~], or a serious traffic violation as defined by Section 522.003, Transportation Code [~~in Section 3(26), Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes)~~].

SECTION 63. Subsections (b) and (c), Article 102.002, Code of Criminal Procedure, are amended to read as follows:

(b) The justices of the peace and municipal courts shall maintain a record of and the clerks of district and county courts and county courts at law shall keep a book and record in the book:

(1) the number and style of each criminal action before the court;

(2) the name of each witness subpoenaed, attached, or recognized to testify in the action; and

(3) whether the witness was a witness for the state or for the defendant.

(c) Except as otherwise provided by this subsection, a defendant is liable on conviction for the fees provided by this article for witnesses in the defendant's case. If a defendant convicted of a misdemeanor does not pay the defendant's [~~his~~] fines and costs, the county or municipality, as appropriate, is liable for the fees provided by this article for witnesses in the defendant's case.

SECTION 64. Article 102.004, Code of Criminal Procedure, is amended to read as follows:

Art. 102.004. JURY FEE. (a) A defendant convicted by a jury in a trial before a justice or municipal court shall pay a jury fee of $3. A defendant in a justice or municipal court who requests a trial by jury and who withdraws the request not earlier than 24 hours before the time of trial shall pay a jury fee of $3, if the defendant is convicted of the offense or final disposition of the defendant's case is deferred. A defendant convicted by a jury in a county court, a county court at law, or a district court shall pay a jury fee of $20.

(b) If two or more defendants are tried jointly in a justice or municipal court, only one jury fee of $3 may be imposed under this article. If the defendants sever and are tried separately, each defendant convicted shall pay a jury fee.

SECTION 65. Article 45.11, Code of Criminal Procedure, is redesignated as Article 44.281, Code of Criminal Procedure, transferred to Chapter 44 of that code, and amended to read as follows:

Art. 44.281 [~~45.11~~]. DISPOSITION OF FINES AND COSTS WHEN MISDEMEANOR AFFIRMED [~~FEES~~]. In misdemeanor cases affirmed on appeal from a municipal court, the [~~The~~] fine imposed on appeal and the costs imposed on appeal shall be collected from [~~of~~] the defendant, and the [~~such~~] fine of the municipal [~~corporation~~] court when collected shall be paid into the municipal treasury.

SECTION 66. Section 52.027, Family Code, is amended by amending Subsection (h) and adding Subsection (j) to read as follows:

(h) If a child [~~A municipal court or justice court may not hold a child in contempt for~~] intentionally or knowingly fails [~~refusing~~] to obey a lawful order of disposition after an adjudication of guilt of a traffic offense or other offense punishable by fine only, the[~~. The~~] municipal court or justice court may:

(1) except as provided by Subsection (j), hold the child in contempt of the municipal court or justice court order and order the child to pay a fine not to exceed $500; or

(2) [~~shall instead~~] refer the child to the appropriate juvenile court for delinquent conduct for contempt of the municipal court or justice court order.

(j) A municipal or justice court may not order a child to a term of confinement or imprisonment for contempt of a municipal or justice court order under Subsection (h).

SECTION 67. Subsection (b), Section 30.00430, Government Code, is amended to read as follows:

(b) Complaints must comply with Article 45.019 [~~45.17~~], Code of Criminal Procedure.

SECTION 68. Subsection (b), Section 30.00940, Government Code, is amended to read as follows:

(b) Complaints must comply with Article 45.019 [~~45.17~~], Code of Criminal Procedure.

SECTION 69. Subsection (b), Section 30.01101, Government Code, is amended to read as follows:

(b) Complaints must comply with Article 45.019 [~~45.17~~], Code of Criminal Procedure.

SECTION 70. Subsection (b), Section 30.01221, Government Code, is amended to read as follows:

(b) Complaints must comply with Article 45.019 [~~45.17~~], Code of Criminal Procedure.

SECTION 71. Subsection (d), Section 406.014, Government Code, is amended to read as follows:

(d) A notary public who administers an oath pursuant to Article 45.019 [~~45.01~~], Code of Criminal Procedure, is exempt from the requirement in Subsection (a) of recording that oath.

SECTION 72. Subsection (b), Section 542.402, Transportation Code, is amended to read as follows:

(b) In each fiscal year, a municipality having a population of less than 5,000 may retain, from fines collected for violations of highway laws in this subtitle and from special expenses collected under Article 45.051 [~~45.54~~], Code of Criminal Procedure, in cases in which a violation of this subtitle is alleged, an amount equal to 30 percent of the municipality's revenue for the preceding fiscal year from all sources, other than federal funds and bond proceeds, as shown by the audit performed under Section 103.001, Local Government Code. After a municipality has retained that amount, the municipality shall send to the comptroller any portion of a fine or a special expense collected that exceeds $1.

SECTION 73. Subsection (a), Section 543.204, Transportation Code, is amended to read as follows:

(a) A justice of the peace or municipal judge who defers further proceedings, suspends all or part of the imposition of the fine, and places a defendant on probation under Article 45.051 [~~45.54~~], Code of Criminal Procedure, or a county court judge who follows that procedure under Article 42.111, Code of Criminal Procedure, may not submit a written record to the department, except that if the justice or judge subsequently adjudicates the defendant's guilt, the justice or judge shall submit the record not later than the 30th day after the date on which the justice or judge adjudicates guilt.

SECTION 74. Subdivision (1), Section 706.001, Transportation Code, is amended to read as follows:

(1) "Complaint" means a notice of an offense as described by Article 27.14(d) or 45.019 [~~45.01~~], Code of Criminal Procedure.

SECTION 75. (a) Articles 44.13, 45.01, 45.02, 45.05, 45.07, 45.08, 45.09, 45.12, 45.16, 45.19, 45.22, 45.23, 45.26, 45.27, 45.32, and 45.49, Code of Criminal Procedure, are repealed.

(b) Sections 543.102-543.110, Transportation Code, are repealed.

SECTION 76. This Act takes effect September 1, 1999.

SECTION 77. (a) The changes in law made by this Act apply to every act, proceeding, or event covered by a law amended by this Act that occurs on or after the effective date of this Act, without regard to whether the offense to which the act, proceeding, or event applies occurred before, on, or after the effective date of this Act, except as provided by Subsections (b)-(f) of this section.

(b) In a proceeding related to the prosecution of an offense that occurs or is alleged to have occurred before the effective date of this Act, the accused may elect to have the proceeding governed by any provision of Chapter 45, Code of Criminal Procedure, as that provision would have applied to the offense in the absence of the changes made by this Act, and that prior law is continued in effect for that purpose.

(c) The change in law made by Section 49 of this Act to Article 45.522, Code of Criminal Procedure, redesignated by this Act as Article 45.050, Code of Criminal Procedure, and the change in law made by Section 66 of this Act to Section 52.027, Family Code, applies only to an offense committed or, for the purposes of Title 3,

Family Code, to conduct that occurs on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. Conduct that occurs before the effective date of this Act is covered by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense is committed on or after the effective date of this Act if every element of the offense occurs on or after that date and conduct violating a penal law of this state occurs on or after the effective date of this Act if every element of the violation occurs on or after that date.

(d) The change in law made by Article 45.012(g), Code of Criminal Procedure, as added by this Act, applies only to a paper issued or an act committed on or after September 1, 2000.

(e) Article 45.013, Code of Criminal Procedure, as added by this Act, applies only to a document required to be filed on or after the effective date of this Act.

(f) The change in law made by this Act to Article 44.181(a), Code of Criminal Procedure, applies only to an appeal from a justice or municipal court that is filed on or after the effective date of this Act. An appeal filed before the effective date of this Act is covered by the law in effect when the appeal was filed, and the former law is continued in effect for that purpose.

SECTION 78. 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 1104**

Senator Cain submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 1104** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

| | |
|---|---|
| CAIN | DUNNAM |
| OGDEN | A. REYNA |
| WEST | LENGEFELD |
| SIBLEY | HOCHBERG |
| RATLIFF | |
| 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 358

Senator Madla 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 358** 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 | GRAY |
| HARRIS | BOSSE |
| NIXON | CAPELO |
| MONCRIEF | MCCALL |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and functions of the Texas Department of Mental Health and Mental Retardation.

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

SECTION 1. Section 532.002, Health and Safety Code, is amended to read as follows:

Sec. 532.002. SUNSET PROVISION. The Texas Department of Mental Health and Mental Retardation is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that Act, the department is abolished and this chapter expires September 1, 2011 [~~1999~~].

SECTION 2. Chapter 532, Health and Safety Code, is amended by adding Section 532.0035 to read as follows:

Sec. 532.0035. BOARD TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training session that complies with this section.

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

(1) the legislation that created the department and board;

(2) the programs operated by the department;

(3) the roles and functions of the department;

(4) the rules of the department with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the department;

(6) the results of the most recent formal audit of the department;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

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

(8) any applicable ethics policies adopted by the department or the Texas Ethics Commission.

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

SECTION 3. Subsections (d) and (e), Section 532.016, Health and Safety Code, are amended to read as follows:

(d) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement that implements [~~to assure implementation of~~] a program of equal employment opportunity to ensure that [~~under which~~] all personnel decisions [~~transactions~~] are made without regard to race, color, disability [~~handicap~~], sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, [~~appointment,~~] training, and promotion of personnel, that show the intent of the department to avoid the unlawful employment practices described by Chapter 21, Labor Code;

(2) an analysis of the extent to which the composition of the department's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law[~~;~~

[~~(2) a comprehensive analysis of the department work force that meets federal and state guidelines~~]; and

(3) procedures by which a determination can be made of significant underutilization in the department work force of all persons for whom federal or state guidelines encourage a more equitable balance and reasonable methods to appropriately address those areas of significant underutilization.

(e) The [~~A~~] policy statement [~~prepared under Subsection (d)~~] must:

(1) [~~cover an annual period;~~

[~~(2)~~]] be updated [~~at least~~] annually;

(2) be reviewed by the Commission on Human Rights for compliance with Subsection (d)(1); and

(3) be filed with the governor's office [~~governor~~].

SECTION 4. Subchapter A, Chapter 533, Health and Safety Code, is amended by adding Section 533.013 to read as follows:

Sec. 533.013. DUPLICATION OF REHABILITATION SERVICES. The department shall enter into an agreement with the Texas Rehabilitation Commission that defines the roles and responsibilities of the department and the commission regarding the agencies' shared client populations. The agreement must establish methods to prevent the duplication and fragmentation of employment services provided by the agencies.

SECTION 5. Section 533.032, Health and Safety Code, is amended to read as follows:

Sec. 533.032. LONG-RANGE PLANNING [~~PLAN~~]. (a) The department shall have a long-range plan covering at least six years that includes at least the provisions required by Sections 531.022 and 531.023, Government Code [~~Section 10, Article 4413(502), Revised Statutes~~], and Chapter 2056, Government Code. The plan must cover the provision of services in and policies for state-operated institutions and ensure that the medical needs of the most medically fragile persons the department serves are met.

(b) In developing the plan, the department shall:

(1) solicit input from:

(A) local authorities for mental health and mental retardation;

(B) community representatives;

(C) consumers of mental health and mental retardation services, including consumers of campus-based and community-based services, and family members of consumers of those services; and

(D) other interested persons; and

(2) consider the report developed under Subsection (c).

(c) The department shall develop a report containing information and recommendations regarding the most efficient long-term use and management of the department's campus-based facilities. The report must:

(1) project future bed requirements for state schools and state hospitals;

(2) document the methodology used to develop the projection of future bed requirements;

(3) project maintenance costs for institutional facilities;

(4) recommend strategies to maximize the use of institutional facilities; and

(5) specify how each state school and state hospital will:

(A) serve and support the communities and consumers in its service area; and

(B) fulfill statewide needs for specialized services.

(d) In developing the report under Subsection (c), the department shall:

(1) conduct two public meetings, one meeting to be held at the beginning of the process and the second meeting to be held at the end of the process, to receive comments from interested parties; and

(2) consider:

(A) the medical needs of the most medically fragile of its clients;

(B) the provision of services to clients with severe and profound mental retardation and to persons with mental retardation who are medically fragile or have behavioral problems;

(C) the program and service preference information collected under Section 533.038; and

(D) input solicited from consumers of services of state schools and state hospitals.

(e) The department shall develop a report analyzing state and federally funded residential services for persons with mental retardation. The report shall:

(1) determine any disparity in cost and quality outcomes achieved between services provided in state-operated programs, including but not limited to ICFs-MR and HCS, and the same or comparable services provided by private sector providers; and

(2) identify and quantify the reasons for any disparity that exists.

(f) The department, in preparing the report under Subsection (e), shall obtain ongoing input from stakeholders, including department staff, private providers, advocates, consumers, and family members of consumers.

(g) The department shall:

(1) attach the reports required by Subsections (c) and (e) to the department's legislative appropriations request for each biennium;

(2) at the time the department presents its legislative appropriations request, present the reports to the:

(A) governor;

(B) governor's budget office;

(C) lieutenant governor;

(D) speaker of the house of representatives;

(E) Legislative Budget Board; and

(F) Health and Human Services Commission; and

(3) update the department's long-range plan biennially and include the reports in the plan.

(h) The department shall, in coordination with the Health and Human Services Commission, evaluate the current and long-term costs associated with serving inpatient psychiatric needs of persons living in counties now served by at least three state hospitals within 120 miles of one another. This evaluation shall take into consideration the condition of the physical plants and other long-term asset management issues associated with the operation of the hospitals, as well as other issues associated with quality psychiatric care. After such determination is made, the Health and Human Services Commission shall begin to take action to influence the utilization of these state hospitals in order to ensure efficient service delivery.

SECTION 6. Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Section 533.0325 to read as follows:

Sec. 533.0325. CONTINUUM OF SERVICES IN CAMPUS FACILITIES. The board by rule shall establish criteria regarding the uses of the department's campus-based facilities as part of a full continuum of services.

SECTION 7. Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Sections 533.0345 and 533.0346 to read as follows:

Sec. 533.0345. STATE AGENCY SERVICES STANDARDS. (a) The department by rule shall develop model program standards for mental health and mental retardation services for use by each state agency that provides or pays for mental health or mental retardation services. The department shall provide the model standards to each agency that provides mental health or mental retardation services as identified by the Health and Human Services Commission.

(b) Model standards developed under Subsection (a) must be designed to improve the consistency of mental health and mental retardation services provided by or through a state agency.

(c) Biennially the department shall review the model standards developed under Subsection (a) and determine whether each standard contributes effectively to the consistency of service delivery by state agencies.

Sec. 533.0346. AUTHORITY TO TRANSFER SERVICES TO COMMUNITY CENTERS. (a) The department may transfer operations of and services provided at the Amarillo State Center, Beaumont State Center, and Laredo State Center to a community center established under Chapter 534, including a newly established center providing mental retardation services or mental health and mental retardation services.

(b) The transfer may occur only on the department's approval of a plan submitted in accordance with Section 534.001(d) or of an amendment to a previously approved plan. In developing the plan or plan amendment, the center or proposed center proposing to accept the state center operation and service responsibilities shall consider input from consumers of mental health and mental retardation services and family members of and advocates for those consumers, organizations that represent affected employees, and other providers of mental health and mental retardation services.

(c) The center or proposed center proposing to accept the state center operation and service responsibilities shall publish notice of the initial planning meeting regarding the content of the plan or plan amendment and of the meeting to review the content of the proposed plan or plan amendment before it is submitted under Section 534.001(d). The notices must include the time and location of the meeting. The notice of the meeting to review the content of the plan or amendment must include information regarding how to obtain a copy of the proposed plan or amendment. The notices must be published not fewer than 30 days and not more than 90 days before the date set for the meeting in a newspaper of general circulation in each county containing any part of the proposed service area. If a county in which notice is required to be published does not have a newspaper of general circulation, the notices shall be published in a newspaper of general circulation in the nearest county in which a newspaper of general circulation is published.

(d) At the time the operations and services are transferred to the community center, money supporting the cost of providing operations and services at a state center shall be transferred to the community center to ensure continuity of services.

(e) The Amarillo State Center is exempt from the requirements listed in Subsections (b) and (c).

SECTION 8. Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Section 533.0351 to read as follows:

Sec. 533.0351. LOCAL AUTHORITY TECHNICAL ADVISORY COMMITTEE. (a) In this section "local authority" means a local mental health or mental retardation authority.

(b) The commissioner shall establish a nine-member local authority advisory committee to advise the commissioner on technical and administrative issues that directly affect local authority responsibilities.

(c) The committee is composed of representatives of local authorities and one member representing the public appointed by the commissioner. In appointing the members, the commissioner shall ensure a balanced representation of:

(1) different regions of this state;

(2) rural and urban counties; and

(3) single-county and multicounty local authorities.

(d) Except for the member representing the public, members appointed to the advisory committee must have expertise in the day-to-day operations of a local authority.

(e) The advisory committee shall:

(1) review rules and proposed rules related to local authority operations;

(2) advise the commissioner regarding evaluation and coordination of initiatives related to local authority operations;

(3) advise and assist the department in developing a method of contracting with local authorities that will result in contracts that are flexible and responsive to:

(A) the needs and services of local communities; and

(B) the department's performance expectations;

(4) coordinate with and monitor the activities of work groups whose actions may affect local authority operations;

(5) report to the board on the committee's activities and recommendations at least once each fiscal quarter; and

(6) work with the commissioner as the commissioner directs.

(f) For any written recommendation the committee makes to the department, the department shall provide to the committee a written response regarding any action taken on the recommendation or the reasons for the department's inaction on the subject of the recommendation.

(g) The committee is subject to Chapter 2110, Government Code. The department by rule shall provide, in accordance with Section 2110.008, Government Code, that the committee is abolished on September 1, 2007, unless the board affirmatively votes to continue the committee in existence.

SECTION 9. Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Section 533.0356 to read as follows:

Sec. 533.0356. LOCAL BEHAVIORAL HEALTH AUTHORITIES. (a) In this section, "commission" means the Texas Commission on Alcohol and Drug Abuse.

(b) The department and the commission jointly may designate a local behavioral health authority in a local service area to provide mental health and chemical dependency services in that area. The board and the commission may delegate to an authority designated under this section the authority and responsibility for planning, policy development, coordination, resource allocation, and resource development for and oversight of mental health and chemical dependency services in that service area. An authority designated under this section has:

(1) all the responsibilities and duties of a local mental health authority provided by Section 533.035 and by Subchapter B, Chapter 534; and

(2) the responsibility and duty to ensure that chemical dependency services are provided in the service area as described by the statewide service delivery plan adopted under Section 461.0124.

(c) In the planning and implementation of services, the authority shall give proportionate priority to mental health services and chemical dependency services that ensures that funds purchasing services are used in accordance with specific regulatory and statutory requirements that govern the respective funds.

(d) A local mental health authority may apply to the department and commission for designation as a local behavioral health authority.

(e) The department and commission, by contract or by a case-rate or capitated arrangement or another method of allocation, may disburse money, including federal money, to a local behavioral health authority for services.

(f) A local behavioral health authority, with the approval of the department or the commission as provided by contract, shall use money received under Subsection (e) to ensure that mental health and chemical dependency services are provided in the local service area at the same level as the level of services previously provided through:

(1) the local mental health authority; and

(2) the commission.

(g) In determining whether to designate a local behavioral health authority for a service area and in determining the functions of the authority if designated, the department and commission shall solicit and consider written comments from any

interested person including community representatives, persons who are consumers of the proposed services of the authority, and family members of those consumers.

(h) An authority designated under this section shall demonstrate to the department and the commission that services involving state funds that the authority oversees comply with relevant state standards.

(i) The board and the commission jointly may adopt rules to govern the operations of local behavioral health authorities. The department and the commission jointly may assign the local behavioral health authority the duty of providing a single point of entry for mental health and chemical dependency services.

SECTION 10. Section 533.038, Health and Safety Code, is amended by adding Subsections (d), (e), and (f) to read as follows:

(d) A person with mental retardation, or a person's legally authorized representative, seeking residential services shall receive a clear explanation of programs and services for which the person is determined to be eligible, including state schools, community ICF-MR programs, waiver services under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)), or other services. The preferred programs and services chosen by the person or the person's legally authorized representative shall be documented in the person's record. If the preferred programs or services are not available, the person or the person's legally authorized representative shall be given assistance in gaining access to alternative services and the selected waiting list.

(e) The department shall ensure that the information regarding program and service preferences collected under Subsection (d) is documented and maintained in a manner that permits the department to access and use the information for planning activities conducted under Section 533.032.

(f) The department may spend money appropriated for the state school system only in accordance with limitations imposed by the General Appropriations Act.

SECTION 11. Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Section 533.039 to read as follows:

Sec. 533.039. CLIENT SERVICES OMBUDSMAN. (a) The commissioner shall employ an ombudsman responsible for assisting a person, or a parent or guardian of a person, who has been denied service by the department, a department program or facility, or a local mental health or mental retardation authority.

(b) The ombudsman shall:

(1) explain and provide information on department and local mental health or mental retardation authority services, facilities, and programs and the rules, procedures, and guidelines applicable to the person denied services; and

(2) assist the person in gaining access to an appropriate program or in placing the person on an appropriate waiting list.

SECTION 12. Subsection (a), Section 534.004, Health and Safety Code, is amended to read as follows:

(a) The local agency or organizational combination of local agencies that establishes a community center shall prescribe:

(1) the application procedure for a position on the board of trustees;

(2) the procedure and criteria for making appointments to the board of trustees;

(3) the procedure for posting notice of and filling a vacancy on the board of trustees; and

(4) the grounds and procedure for removing a member of the board of trustees[~~; and~~

[~~(5) a procedure to ensure that an appointed member of a board of trustees appointed by a local agency or organizational combination of local agencies primarily located in only one county serves not more than four consecutive and complete two-year terms~~].

SECTION 13. Section 534.005, Health and Safety Code, is amended to read as follows:

Sec. 534.005. TERMS; VACANCIES. (a) Appointed members of the board of trustees who are not members of a local agency's governing body serve staggered two-year terms. In appointing the initial members, the appointing authority shall designate not less than one-third or more than one-half of the members to serve one-year terms and shall designate the remaining members to serve two-year terms.

(b) A vacancy on a board of trustees composed of qualified voters is filled by appointment for the remainder of the unexpired term.

[~~(c) If the local agency or organizational combination of local agencies that appoints the board of trustees is primarily located in only one county, a person appointed to the board of trustees may not serve more than four consecutive and complete two-year terms.~~]

SECTION 14. Section 534.007, Health and Safety Code, is amended to read as follows:

Sec. 534.007. PROHIBITED ACTIVITIES BY FORMER OFFICERS OR EMPLOYEES; OFFENSE. (a) A [~~For one year after the date on which a~~] former officer or employee of a community center who ceases [~~terminates~~] service or employment with the center[~~, the individual~~] may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official[~~, directly or indirectly, attempt or aid in the attempt to procure a contract with the community center in which the individual served or was employed if the contract relates to a program or service in which the individual was directly concerned or for which the individual had administrative~~] responsibility.

(b) This section does not apply to:

(1) a former employee who is compensated on the last date of service or employment below the amount prescribed by the General Appropriations Act for [~~step 1,~~] salary group 17, Schedule A, or salary group 9, Schedule B, of the position classification salary schedule; or

(2) a former officer or employee who is employed by a state agency or another community center.

(c) Subsection (a) does not apply to a proceeding related to policy development that was concluded before the officer's or employee's service or employment ceased.

(d) A former officer or employee of a community center commits an offense if the former officer or employee violates this section. An offense under this section is a Class A misdemeanor.

(e) In this section:

(1) "Participated" means to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.

(2) "Particular matter" means a specific investigation, application, request for a ruling or determination, proceeding related to the development of policy, contract, claim, charge, accusation, arrest, or judicial or other proceeding.

SECTION 15. Subsection (b), Section 534.065, Health and Safety Code, is amended to read as follows:

(b) The mental health or mental retardation authority may [~~shall~~] renew the contract only if the contract meets the criteria provided by Section 533.016 [~~if the authority finds that:~~

[~~(1) funding is available;~~

[~~(2) the authority plans to continue the services;~~

[~~(3) the provider is in substantial compliance with each material provision of the contract, unless the authority determines that the provision is not legal and enforceable under applicable state and federal law;~~

[~~(4) the provider is providing a reasonably adequate level of service in accordance with the contract and at a reasonable cost;~~

[~~(5) the provider agrees to a renewal contract that is substantially in compliance with a model contract developed by the department under Section 534.055;~~

[~~(6) the provider was during the term of any contract with the authority and is at the time of renewal in compliance with applicable laws governing the subject matter of the contract; and~~

[~~(7) neither the provider nor any of its officers, directors, or principal employees has been convicted or found by a final administrative decision to have been guilty of fraud or abuse in the provision of health care services under a contract with a state or federal agency~~].

SECTION 16. Subchapter C, Chapter 534, Health and Safety Code, is amended by adding Section 534.106 to read as follows:

Sec. 534.106. CONDITIONS FOR CERTAIN CONTRACTS. A contract between the department and a health maintenance organization formed by one or more community centers must provide that the health maintenance organization may not form a for-profit entity unless the organization transfers all of the organization's assets to the control of the boards of trustees of the community centers that formed the organization.

SECTION 17. Chapter 461, Health and Safety Code, is amended by adding Section 461.0128 to read as follows:

Sec. 461.0128. STATE AGENCY SERVICES STANDARDS. (a) The commission by rule shall develop model program standards for substance abuse services for use by each state agency that provides or pays for substance abuse services. The commission shall provide the model standards to each agency that provides substance abuse services as identified by the Health and Human Services Commission.

(b) Model standards developed under Subsection (a) must be designed to improve the consistency of substance abuse services provided by or through a state agency.

(c) Biennially the commission shall review the model standards developed under Subsection (a) and determine whether each standard contributes effectively to the consistency of service delivery by state agencies.

SECTION 18. Chapter 461, Health and Safety Code, is amended by adding Section 461.0129 to read as follows:

Sec. 461.0129. LOCAL BEHAVIORAL HEALTH AUTHORITIES. The commission may designate and provide services through local behavioral health authorities as provided by Section 533.0356 and rules adopted jointly with the Texas Board of Mental Health and Mental Retardation.

SECTION 19. Section 574.083, Health and Safety Code, is amended to read as follows:

Sec. 574.083. RETURN TO FACILITY UNDER [~~FACILITY ADMINISTRATOR'S CERTIFICATE OR~~] COURT ORDER. (a) The facility administrator of a facility to which a patient was admitted for court-ordered inpatient health care services may have an absent patient taken into custody, detained, and returned to the facility by filing an affidavit as prescribed by Subsection (c)[~~:~~

[~~(1) signing a certificate authorizing the patient's return; or~~

[~~(2) filing the certificate~~] with a magistrate and requesting the magistrate to order the patient's return.

(b) A magistrate may issue an order directing a peace or health officer to take a patient into custody and return the patient to the facility if the facility administrator files the affidavit [~~certificate as~~] prescribed by Subsection (c) [~~this section~~]. An order issued under this subsection extends to any part of this state and authorizes any peace officer to whom the order is directed or transferred to execute the order.

(c) An affidavit filed under Subsection (a) must set out facts establishing that the patient is receiving court-ordered inpatient mental health services at a facility and show that [~~The facility administrator may sign or file the certificate if~~] the facility administrator reasonably believes that:

(1) the patient is absent without authority from the facility;

(2) the patient has violated the conditions of a pass or furlough; or

(3) the patient's condition has deteriorated to the extent that the patient's continued absence from the facility under a pass or furlough is inappropriate.

(d) A peace or health officer shall take the patient into custody and return the patient to the facility as soon as possible if the patient's return is authorized by [~~the facility administrator's certificate or~~] the court order.

(e) The peace or health officer may take the patient into custody without having the [~~certificate or~~] court order in the officer's possession.

(f) A peace or health officer who cannot immediately return a patient to the facility named in the order may transport the patient to a local facility for detention. The patient may not be detained in a nonmedical facility that is used to detain persons who are charged with or convicted of a crime unless detention in the facility is warranted by an extreme emergency. If the patient is detained at a nonmedical facility:

(1) the patient:

(A) may not be detained in the facility for more than 24 hours; and

(B) must be isolated from all persons charged with or convicted of a crime; and

(2) the facility must notify the county health authority of the detention.

(g) The county health authority shall ensure that a patient detained in a nonmedical facility under Subsection (f) receives proper care and medical attention.

(h) Notwithstanding other law regarding confidentiality of patient information, the facility administrator may release to a law enforcement official information about the patient if the administrator determines the information is needed to facilitate the return of the patient to the facility.

SECTION 20. Section 593.012, Health and Safety Code, is amended to read as follows:

Sec. 593.012. ABSENT WITHOUT AUTHORITY [~~PERMISSION~~]. (a) The superintendent of a residential care facility to which a client has been admitted for court-ordered care and treatment may have a client who is absent without authority taken into custody, detained, and returned to the facility by filing an affidavit with a magistrate in the manner prescribed by Section 574.083 [~~may immediately issue an order authorizing a peace officer to detain a resident committed to the facility under Subchapter C who is absent from the facility without proper permission~~].

(b) The client shall be returned to the residential care facility in accordance with the procedures prescribed by Section 574.083 [~~A peace officer shall immediately notify the superintendent when the officer takes a resident into custody and shall promptly arrange the return of the resident to the assigned facility on request of the superintendent~~].

SECTION 21. (a) The Texas Department of Mental Health and Mental Retardation and the Texas Department of Housing and Community Affairs shall implement a program to demonstrate the effectiveness of interagency cooperation for providing supported housing services to individuals with mental illness who reside in personal care facilities.

(b) The Texas Department of Mental Health and Mental Retardation and the Texas Department of Housing and Community Affairs shall design the supported housing services to give individualized assistance to persons to acquire and retain living arrangements that are:

(1) typical of the general population in the area in which the services are provided; and

(2) located among residences of individuals who are not receiving the services.

(c) The supported housing services under the program must be provided in accordance with rules of the Texas Department of Mental Health and Mental Retardation and may include:

(1) rental assistance for an individual who:

(A) meets income guidelines of the Texas Department of Housing and Community Affairs; and

(B) is not receiving housing assistance from the federal government;

(2) consumer rehabilitation services; and

(3) support services.

(d) The Texas Department of Mental Health and Mental Retardation and the Texas Department of Housing and Community Affairs shall work with the Texas Department of Human Services to allocate resources for the demonstration program so that priority is given to communities that:

(1) have the greatest number of personal care facilities and facilities that do not comply with licensing rules for personal care facilities; and

(2) have supported housing plans that the Texas Department of Mental Health and Mental Retardation and the Texas Department of Housing and Community Affairs have found to be consistent with the purposes of the demonstration program.

(e) The Texas Department of Mental Health and Mental Retardation and the Texas Department of Housing and Community Affairs shall establish an application process for communities that seek to participate in the demonstration program.

(f) The Texas Department of Mental Health and Mental Retardation and the Texas Department of Housing and Community Affairs shall establish a committee to

supervise the design and implementation of the demonstration program. The committee must include representatives of:

(1) the Texas Department of Mental Health and Mental Retardation;

(2) the Texas Department of Housing and Community Affairs;

(3) the Texas Department of Human Services;

(4) consumers of mental health services; and

(5) advocates of persons with mental illness.

(g) A community may not be selected to participate in the demonstration program unless the person that applies for the community's participation demonstrates collaboration between the local mental health authority and a public housing authority, community housing development organization, community development corporation, or other housing organization.

(h) An individual is not eligible for assistance under the demonstration program if the individual:

(1) does not have a mental illness;

(2) does not reside in a licensed or unlicensed personal care facility at the time the individual is first offered services under the demonstration program; or

(3) was placed in a licensed or unlicensed personal care facility for the sole purpose of becoming eligible for the demonstration program.

(i) The Texas Department of Mental Health and Mental Retardation and the Texas Department of Housing and Community Affairs shall implement the demonstration program required by this section as soon as possible after the effective date of this Act and not later than January 1, 2000.

(j) On or before January 15, 2001, the Texas Department of Mental Health and Mental Retardation and the Texas Department of Housing and Community Affairs shall make a joint report to the governor, the lieutenant governor, and the speaker of the house of representatives. The report must include an evaluation of the demonstration program's benefits for individuals who received services and recommendations on the continuation or termination of the project or commencement of a similar project.

(k) This section expires August 31, 2001.

SECTION 22. (a) The commissioner of health and human services shall appoint a committee to evaluate the delivery and regulation of the services to residents of intermediate care facilities for the mentally retarded under Chapters 222 and 252, Health and Safety Code. The committee is composed of the following nine members:

(1) four members representing residents, families, and advocates;

(2) three members representing providers;

(3) one ex officio nonvoting member representing the Texas Department of Human Services; and

(4) one ex officio nonvoting member representing the Texas Department of Mental Health and Mental Retardation.

(b) The committee shall evaluate the impact and feasibility of consolidating at the Texas Department of Mental Health and Mental Retardation service delivery, licensing, surveying, and regulation of intermediate care facilities for the mentally retarded. In evaluating that impact and feasibility, the committee shall:

(1) review the current service delivery, licensing, surveying, and regulation;

(2) analyze current consumer and provider satisfaction with service delivery, licensing, surveying, and regulation;

(3) determine the impact on residents and providers of consolidating service delivery, licensing, surveying, and regulation at the Texas Department of Mental Health and Mental Retardation;

(4) determine if the transfer of service delivery, licensing, surveying, and regulation to the Texas Department of Mental Health and Mental Retardation from the Texas Department of Human Services, or a successor agency, to achieve consolidation is in the best interests of the residents; and

(5) adopt a plan to address the consolidation if the committee determines that the transfer is in the best interests of the residents.

(c) The committee shall prepare a report that includes its findings and recommendations, including a specific recommendation on whether consolidation of service delivery, licensing, surveying, and regulation at the Texas Department of Mental Health and Mental Retardation is or is not in the best interests of the residents. Not later than October 1, 2000, the committee shall present the report to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officers of the house and senate committees having jurisdiction over the affected agencies.

SECTION 23. (a) The transfer prescribed by this section may not occur if the committee established under Section 22 of this Act determines, in accordance with that section, that consolidating service delivery, licensing, surveying, and regulation at the Texas Department of Mental Health and Mental Retardation is not in the best interests of the residents.

(b) Subject to limitations imposed by Subsection (a) of this section or by federal law, on September 1, 2001, the licensing, surveying, and regulation of intermediate care facilities for the mentally retarded under Chapters 222 and 252, Health and Safety Code, are transferred from the Texas Department of Human Services, or its successor agency, to the Texas Department of Mental Health and Mental Retardation.

(c) On the transfer of the functions listed in Subsection (b) of this section:

(1) all funds, obligations, and contracts of the Texas Department of Human Services related to a listed function are transferred to the Texas Department of Mental Health and Mental Retardation;

(2) all property and records in the custody of the Texas Department of Human Services related to a listed function and all funds appropriated by the legislature to the Texas Department of Human Services for a listed function are transferred to the Texas Department of Mental Health and Mental Retardation;

(3) all employees of the Texas Department of Human Services who perform duties related to a listed function become employees of the Texas Department of Mental Health and Mental Retardation, to be assigned duties by that department;

(4) a rule or form adopted by the Texas Department of Human Services that relates to a listed function is a rule or form of the Texas Department of Mental Health and Mental Retardation and remains in effect until altered by that department; and

(5) the Texas Department of Mental Health and Mental Retardation, in consultation with the commissioner of health and human services, shall establish policies and procedures that clearly delineate the functions of the department related to service delivery and the functions of the department related to licensing, surveying, and regulation.

(d) The secretary of state is authorized to adopt rules as necessary to expedite the implementation of Subsection (c)(4) of this section.

(e) The transfer of the functions listed in Subsection (b) of this section does not affect or impair any act done, any obligation, right, order, license, permit, rule, criterion, standard, or requirement existing, any investigation begun, or any penalty accrued under former law, and that law remains in effect for any action concerning those matters.

(f) An action brought or proceeding commenced before the transfer prescribed by this section is effected, including a contested case or a remand of an action or proceeding by a reviewing court, is governed by the law and rules applicable to the action or proceeding before the date of the transfer.

(g) After the transfer prescribed by this section is effected:

(1) a reference in law to the Texas Department of Human Services that relates to a function listed in Subsection (b) of this section means the Texas Department of Mental Health and Mental Retardation; and

(2) a reference in law to the Texas Board of Human Services that relates to a function listed in Subsection (b) of this section means the Texas Board of Mental Health and Mental Retardation.

(h) The commissioner of health and human services shall facilitate and supervise the transfer prescribed by this section and shall ensure the proper transfer of money, information, equipment, employees, property, and other items necessary for the Texas Department of Mental Health and Mental Retardation and the Texas Board of Mental Health and Mental Retardation to assume responsibility for the licensing, surveying, and regulation of intermediate care facilities for the mentally retarded.

SECTION 24. (a) The changes in law made by Section 532.0035, Health and Safety Code, as added by this Act, apply only to a member of the Texas Board of Mental Health and Mental Retardation appointed on or after the effective date of this Act. The qualifications of a board member appointed before the effective date of this Act are governed by the law as it existed immediately before that date and the former law is continued in effect for that purpose.

(b) The changes in law to Section 534.007, Health and Safety Code, made by this Act apply only to a person who ceases employment on or after the effective date of this Act. The relationship between a community center and a former employee who terminated employment before the effective date of this Act is governed by Section 534.007, Health and Safety Code, as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(c) The changes in law to Subsection (b), Section 534.065, Health and Safety Code, made by this Act apply only to a contract considered for renewal on or after the effective date of this Act. Actions related to the renewal of a contract that are taken before the effective date of this Act and a contract renewed before that date are governed by Section 534.065, Health and Safety Code, as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 25. This Act takes effect September 1, 1999.

SECTION 26. 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 1703**

Senator Ellis 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 **SB 1703** 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.

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| ELLIS | HODGE |
| JACKSON | CLARK |
| SHAPLEIGH | EDWARDS |
| ZAFFIRINI | HILL |
| | NAJERA |
| On the part of the Senate | On the part of the House |

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, or a census tract delineated by the U.S. Bureau of the Census in which the median family income as reported by the bureau is less than 80 percent of the area median family income 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 Conference Committee Report was filed with the Secretary of the Senate.

## CONFERENCE COMMITTEE REPORT ON HOUSE BILL 3582

Senator Brown submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 3582** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| BROWN | ALVARADO |
| LUCIO | CRADDICK |
| SHAPLEIGH | NIXON |
| ARMBRISTER | KEFFER |
| HAYWOOD | |
| 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 1603

Senator Harris submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 1603** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| HARRIS | THOMPSON |
| NELSON | CAPELO |
| MADLA | HINOJOSA |
| 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 1223

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 1223** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| ARMBRISTER | SEAMAN |
| SHAPIRO | HUNTER |
| WENTWORTH | UHER |
| ZAFFIRINI | LUNA |
| SHAPLEIGH | P. MORENO |
| 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 1237

Senator Nelson 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 1237** 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.

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|---|---|
| NELSON | VAN DE PUTTE |
| MONCRIEF | UHER |
| ARMBRISTER | J. MORENO |
| JACKSON | |
| BERNSEN | |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to the administration of pharmacy benefits under certain health benefit plans.

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

SECTION 1. Section 1, Article 21.07-6, Insurance Code, is amended by amending Subdivision (1) and adding Subdivision (9) to read as follows:

(1) "Administrator" means a person who collects premiums or contributions from or who adjusts or settles claims in connection with life, health, and accident benefits, including pharmacy benefits, or annuities for residents of this state but does not include:

(A) an employer on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the employer;

(B) a union on behalf of its members;

(C) an insurance company or a group hospital service corporation subject to Chapter 20 of this code with respect to a policy lawfully issued and delivered by it in and under the law of a state in which the insurer was authorized to do an insurance business;

(D) a health maintenance organization that is authorized to operate in this state under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code), with respect to any activity that is specifically regulated under that Act;

(E) an agent licensed under Article 21.07 or Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), who is acting under appointment on behalf of an insurance company authorized to do business in this state and within the customary scope and duties of the insurance agent's authority as an agent and who receives commissions as an agent;

(F) a creditor who is acting on behalf of its debtors with respect to insurance that covers a debt between the creditor and its debtor so long as only the functions of a group policyholder or creditor are performed;

(G) a trust established in conformity with 29 U.S.C. Section 186 and the trustees and employees who are acting under the trust;

(H) a trust that is exempt from taxation under Section 501(a) of the Internal Revenue Code of 1986 and the trustees and employees acting under the trust, or a custodian and the custodian's agents and employees who are acting pursuant to a custodian account that complies with Section 401(f), Internal Revenue Code of 1986;

(I) a bank, credit union, savings and loan association, or other financial institution that is subject to supervision or examination under federal or state law by federal or state regulatory authorities so long as that institution is performing only those functions for which it holds a license under federal or state law;

(J) a company that advances and collects a premium or charge from its credit card holders on their authorization, if the company does not adjust or settle claims and acts only in the company's debtor-creditor relationship with its credit card holders;

(K) a person who adjusts or settles claims in the normal course of his practice or employment as a licensed attorney and who does not collect any premium or charge in connection with life, health, or accident benefits, including pharmacy benefits, or annuities;

(L) an adjuster licensed by the commissioner, if the adjuster is engaged in the performance of his powers and duties as an adjuster within the scope of his license;

(M) a person who provides technical, advisory, utilization review, precertification, or consulting services to an insurer, plan, or plan sponsor and who does not make any management or discretionary decisions on behalf of an insurer, plan, or plan sponsor;

(N) an attorney in fact for a Lloyd's operating under Chapter 18 of this code or a reciprocal or interinsurance exchange operating under Chapter 19 of this code if acting in the capacity of attorney in fact under the applicable chapter;

(O) a municipality that is self-insured or a joint fund, risk management pool, or a self-insurance pool composed of political subdivisions of this state that participate in a fund or pool through interlocal agreements and any nonprofit administrative agency or governing body or any nonprofit entity that acts solely on behalf of a fund, pool, agency, or body or any other funds, pools, agencies, or bodies that are established pursuant to or for the purpose of implementing an interlocal governmental agreement;

(P) a self-insured political subdivision;

(Q) a plan under which insurance benefits are provided exclusively by a carrier licensed to do business in this state and the administrator of the plan is either:

(i) a full-time employee of the plan's organizing or sponsoring association, trust, or other entity; or

(ii) the trustee or trustees of the organizing or sponsoring trust; or

(R) a parent of a wholly owned direct or indirect subsidiary insurer licensed to do business in this state or a wholly owned direct or indirect subsidiary insurer that is a part of the parent's holding company system that, only on behalf of itself or its affiliated insurers:

(i) collects premiums or contributions, if the parent or subsidiary insurer prepares only billing statements, places those statements in the United States mail, and causes all collected premiums to be deposited directly in a depository account of the particular affiliated insurer, and the services rendered by the parent or subsidiary are performed under an agreement regulated and approved under Article 21.49-1 of this code or a similar statute of the domiciliary state if the parent or subsidiary is a foreign insurer doing business in this state; or

(ii) furnishes proof-of-loss forms, reviews claims, determines the amount of the liability for those claims, and negotiates settlements, but pays claims only from the funds of the particular subsidiary by checks or drafts of that subsidiary and the services rendered by the parent or subsidiary are performed under an agreement regulated and approved under Article 21.49-1 of this code or a similar statute of the domiciliary state if the parent or subsidiary is a foreign insurer doing business in this state.

(9) "Pharmacy benefit manager" means a person, other than a pharmacy or pharmacist, who acts as an administrator in connection with pharmacy benefits.

SECTION 2. Article 21.07-6, Insurance Code, is amended by adding Section 19A to read as follows:

Sec. 19A. IDENTIFICATION CARDS FOR CERTAIN PLANS. (a) Except as provided by rules adopted by the commissioner, an administrator for a plan that provides pharmacy benefits shall issue an identification card to each individual covered by the plan.

(b) The commissioner by rule shall adopt standard information to be included on the identification card. At minimum, the standard form identification card must include:

(1) the name or logo of the entity that is administering the pharmacy benefits;

(2) the International Identification Number that is assigned by the American National Standards Institute for the entity that is administering the pharmacy benefits;

(3) the group number applicable for the individual;

(4) the effective date of the coverage evidenced by the card;

(5) a telephone number to be used to contact an appropriate person to obtain information relating to the pharmacy benefits provided under the coverage; and

(6) copayment information for generic and brand-name prescription drugs.

(c) An administrator for a plan that provides pharmacy benefits shall issue to an individual an identification card not later than the 30th day after the date the administrator receives notice that the individual is eligible for the benefits.

SECTION 3. Article 21.07-6, Insurance Code, is amended by adding Section 19B to read as follows:

Sec. 19B. DISCLOSURE OF CERTAIN PATIENT INFORMATION PROHIBITED. (a) A pharmacy benefit manager may not sell a list of patients that contains information through which the identity of individual patients is disclosed.

(b) All data that identifies a patient maintained by the pharmacy benefit manager shall be maintained in a confidential manner that prevents disclosure to third parties, unless the disclosure is otherwise authorized by law or by the patient.

(c) This section does not prohibit:

(1) general advertising about a specific pharmaceutical product or service;

(2) a person from requesting and receiving information regarding a specific pharmaceutical product or service; or

(3) a person from requesting and receiving information regarding the person's own records or claims, or information regarding the person's dependent's records or claims.

SECTION 4. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.53L to read as follows:

Art. 21.53L. PHARMACY BENEFIT CARDS

Sec. 1. DEFINITION. In this article, "health benefit plan" means a health benefit plan described by Section 2 of this article.

Sec. 2. SCOPE OF ARTICLE. (a) This article applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 20 of this code;

(3) a fraternal benefit society operating under Chapter 10 of this code;

(4) a stipulated premium insurance company operating under Chapter 22 of this code;

(5) a reciprocal exchange operating under Chapter 19 of this code;

(6) a health maintenance organization operating under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code);

(7) a multiple employer welfare arrangement that holds a certificate of authority under Article 3.95-2 of this code; or

(8) an approved nonprofit health corporation that holds a certificate of authority issued by the commissioner under Article 21.52F of this code.

(b) This article does not apply to:

(1) a plan that provides coverage:

(A) only for a specified disease or other limited benefit;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to liability insurance;

(E) for credit insurance;

(F) only for dental or vision care;

(G) only for hospital expenses; or

(H) only for indemnity for hospital confinement;

(2) a small employer health benefit plan written under Chapter 26 of this code;

(3) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(4) workers' compensation insurance coverage;

(5) medical payment insurance coverage issued as part of a motor vehicle insurance policy; or

(6) a long-term care policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Subsection (a) of this section.

Sec. 3. IDENTIFICATION CARD; PHARMACY BENEFITS. (a) A health benefit plan that provides pharmacy benefits for enrollees in the plan shall include on the identification card of each enrollee:

(1) the name or logo of the entity that is administering the pharmacy benefits, if different from the health benefit plan;

(2) the group number applicable to the individual;

(3) the effective date of the coverage evidenced by the card;

(4) a telephone number to be used to contact an appropriate person to obtain information relating to the pharmacy benefits provided under the coverage; and

(5) copayment information for generic and brand-name prescription drugs.

(b) This section does not require a health benefit plan that administers its own pharmacy benefits to issue an identification card separate from any identification card issued to an enrollee to evidence coverage under the health benefit plan, if the identification card contains the elements required by Subsection (a) of this section.

Sec. 4. RULES. The commissioner shall adopt rules as necessary to implement this article.

SECTION 5. This Act takes effect September 1, 1999.

SECTION 6. (a) This Act applies only to a person acting as an administrator, as that term is defined by Subdivision (1), Section 1, Article 21.07-6, Insurance Code, as amended by this Act, with respect to pharmacy benefits on or after January 1, 2000. A person acting as an administrator with respect to pharmacy benefits before January 1, 2000, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) An administrator, as that term is defined by Subdivision (1), Section 1, Article 21.07-6, Insurance Code, as amended by this Act, is not required to issue a new

identification card to an individual, as required by Section 19A, Article 21.07-6, Insurance Code, as added by this Act, if the identification card held by the individual on the effective date of this Act contains the elements described by Subdivisions (2) through (5), Subsection (b), Section 19A, Article 21.07-6, Insurance Code, as added by this Act. A new card complying with Section 19A, Article 21.07-6, Insurance Code, as added by this Act, must be issued at the time the individual's coverage is modified.

(c) A health benefit plan, as that term is defined by Section 1, Article 21.53L, Insurance Code, as added by this Act, is not required to issue a new identification card to an enrollee, as required by Section 3, Article 21.53L, Insurance Code, as added by this Act, if the identification card held by the enrollee on the effective date of this Act contains the elements described by Subdivisions (2), (3), and (4), Subsection (a), Section 3, Article 21.53L, Insurance Code, as added by this Act. A new card complying with Article 21.53L, Insurance Code, as added by this Act, must be issued at the time the enrollee's coverage is modified.

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 1128**

Senator Armbrister 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 **SB 1128** 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.

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| ARMBRISTER | GREENBERG |
| NELSON | WALKER |
| LUCIO | TELFORD |
| BERNSEN | MCCLENDON |
| BIVINS | |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to systems and programs administered by the Teacher Retirement System of Texas.

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

SECTION 1. Section 822.201, Government Code, is amended by amending Subsection (b), as amended by Chapters 330 and 1035, Acts of the 75th Legislature, Regular Session, 1997, and adding Subsection (e) to read as follows:

(b) "Salary and wages" as used in Subsection (a) means:

(1) normal periodic payments of money for service the right to which accrues on a regular basis in proportion to the service performed;

(2) amounts by which the member's salary is reduced under a salary reduction agreement authorized by Chapter 610;

(3) amounts that would otherwise qualify as salary and wages under Subdivision (1) but are not received directly by the member pursuant to a good faith, voluntary written salary reduction agreement in order to finance payments to a deferred compensation or tax sheltered annuity program specifically authorized by state law or to finance benefit options under a cafeteria plan qualifying under Section 125 of the Internal Revenue Code of 1986 (26 U.S.C. Section 125), if:

(A) the program or benefit options are made available to all employees of the employer; and

(B) the benefit options in the cafeteria plan are limited to one or more options that provide deferred compensation, group health and disability insurance, group term life insurance, dependent care assistance programs, or group legal services plans; [~~and~~]

(4) performance pay awarded to an employee by a school district as part of a total compensation plan approved by the board of trustees of the district and meeting the requirements of Subsection (e); and[~~:~~]

(5) [~~(4)~~] the benefit replacement pay a person earns under Subchapter H, Chapter 659, as added by Chapter 417, Acts of the 74th Legislature, 1995, except as provided by Subsection (c).

(e) For purposes of Subsection (b)(4), a total compensation plan must:

(1) describe all elements of compensation received by or available to all employees of the employer;

(2) provide for the availability of at least one type of performance pay to classroom teachers employed by the employer;

(3) identify each type of performance pay, the performance criteria for each type of performance pay, and the classes of employees eligible for each type of performance pay;

(4) contain sufficient information concerning the plan to ascertain the amount of each qualifying employee's pay under the plan;

(5) contain performance criteria for earning performance pay that preclude the exercise of discretion for awarding the pay on any basis other than an evaluation of employee or group performance or availability of funding; and

(6) satisfy any other requirements adopted by the retirement system.

SECTION 2. Subchapter A, Chapter 823, Government Code, is amended by adding Section 823.006 to read as follows:

Sec. 823.006. PERMISSIVE SERVICE CREDIT RESTRICTIONS. (a) In this section:

(1) "Nonqualified service" means service for which permissive service credit is authorized by this subtitle, other than:

(A) military service; and

(B) service for any agency or instrumentality of this state, including a political subdivision of this state, or for any public school supported by the United

States or a state or territory of the United States, if credit for the service would not cause a person to receive a retirement benefit for the same service from more than one retirement system or program.

(2) "Permissive service credit" means service credit:

(A) that is not membership credit authorized to be reinstated;

(B) that is recognized under this subtitle for purposes of computing a member's benefit under the retirement system;

(C) for which the member has not received credit with the retirement system; and

(D) that a member may receive only by making a voluntary additional contribution in an amount determined as provided by this subtitle that does not exceed the amount necessary to fund the benefit attributable to the service credit.

(b) The purchase of permissive service credit by a person who first becomes a member of the retirement system after August 31, 2000, is subject to the restrictions and conditions of Subsection (d) in addition to all other requirements of this subtitle applicable to the purchase.

(c) The purchase by any person of permissive service credit that was first made available under the retirement system after December 31, 1997, is subject to the restrictions and conditions of Subsection (d) in addition to all other requirements of this subtitle applicable to the purchase.

(d) Under a circumstance described by Subsection (b) or (c), a member may not purchase more than five years of permissive service credit for nonqualified service, and a member may not purchase service credit for nonqualified service before the member has at least five years of membership service credit.

SECTION 3. Subchapter C, Chapter 823, Government Code, is amended by adding Section 823.203 to read as follows:

Sec. 823.203. MEMBERSHIP SERVICE FOR OPTIONAL RETIREMENT PROGRAM. A member may not establish service credit in the retirement system for any period when the member was participating in the optional retirement program under Chapter 830.

SECTION 4. Section 823.401, Government Code, is amended by adding Subsection (j) to read as follows:

(j) The board of trustees may adopt rules providing for the adoption of a reciprocal agreement with a state or territory of a member's previous employment for the payment for service credit established under this section through the transfer from the state or territory to the retirement system of contributions made on behalf of the member in the form of an eligible rollover distribution as provided by Section 401(a)(31), Internal Revenue Code of 1986, and its subsequent amendments.

SECTION 5. Sections 823.501(b) and (f), Government Code, are amended to read as follows:

(b) A person eligible to reinstate service credit under this section is one who is a [~~contributing~~] member of the retirement system at the time the service is reinstated.

(f) A [~~contributing~~] member may have an account that was terminated by absence from service reactivated by requesting the reactivation in writing. The beneficiary of a decedent who was a [~~contributing~~] member at the time of death may have an account that was terminated by the decedent's absence from service reactivated by requesting the reactivation in writing before the first payment of a death benefit.

SECTION 6. Section 824.101(c), Government Code, is amended to read as follows:

(c) Only one person may be designated as beneficiary of an optional retirement annuity under Section 824.204(c)(1), (c)(2), or (c)(5), and a designation of beneficiary under any of those options may not be made, changed, or revoked, except as provided by Sections 824.1011, [~~and~~] 824.1012, and 824.1013, after the later of the date on which the retirement system makes the first annuity payment to the retiree or the date the first payment becomes due. For purposes of this section, the term "makes payment" includes the depositing in the mail of a payment warrant or the crediting of an account with payment through electronic funds transfer.

SECTION 7. Section 824.1011(a), Government Code, is amended to read as follows:

(a) A retiree who is receiving a standard service or disability retirement annuity under Section 824.203 or 824.304(b) and who marries after the date of the person's retirement may replace the annuity by selecting an optional retirement annuity under Section 824.204(c)(1), (c)(2), or (c)(5) or under Section 824.308(c)(1), (c)(2), or (c)(5), as applicable, and designating the person's spouse as beneficiary before the second [~~first~~] anniversary of the marriage in the same manner as an annuity selection and designation of beneficiary may be made before retirement.

SECTION 8. Section 824.1012(a), Government Code, as added by Chapter 401, Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

(a) As an exception to Section 824.101(c), a retiree who selected an optional service retirement annuity under Section 824.204(c)(1), (c)(2), or (c)(5) or an optional disability retirement annuity under Section 824.308(c)(1), (c)(2), or (c)(5) may revoke the designation of the beneficiary to receive the annuity on the death of the retiree, if a court in a divorce proceeding involving the retiree and beneficiary approves or orders the revocation in the divorce decree or acceptance of a property settlement or if the beneficiary is an adult child of the retiree and signs a notarized consent to the revocation. The revocation takes effect when the retirement system receives it.

SECTION 9. Section 824.1012, Government Code, as added by Chapter 1416, Acts of the 75th Legislature, Regular Session, 1997, is redesignated as Section 824.1013 to read as follows:

Sec. 824.1013 [~~824.1012~~]. CHANGE OF BENEFICIARY AFTER RETIREMENT. (a) A retiree receiving an optional retirement annuity under Section 824.204(c)(1), (c)(2), or (c)(5) or Section 824.308(c)(1), (c)(2), or (c)(5) may change the designated beneficiary as provided by this section for the benefits payable after the retiree's death under those sections.

(b) If the beneficiary designated at the time of the retiree's retirement is the spouse or former spouse of the retiree:

(1) the spouse or former spouse must give written, notarized consent to the change; or

(2) a court with jurisdiction over the marriage must have ordered the change.

(c) A beneficiary designated under this section is entitled on the retiree's death to receive monthly payments of the survivor's portion of the retiree's optional retirement annuity for the shorter of:

(1) the remainder of the life expectancy of the beneficiary designated as of the effective date of the retiree's retirement; or

(2) the remainder of the new beneficiary's life.

(d) A retiree may not change a beneficiary under this section after retirement if the retiree has previously changed or designated after retirement a beneficiary for optional retirement annuity payments under this subtitle.

SECTION 10. Sections 824.203(a) and (e), Government Code, are amended to read as follows:

(a) Except as provided by Subsections (c), (d), and (e), the standard service retirement annuity is an amount computed on the basis of the member's average annual compensation for the three years of service, whether or not consecutive, in which the member received the highest annual compensation, times 2.2 [~~two~~] percent for each year of service credit in the retirement system.

(e) The annual standard service retirement annuity for a person who immediately before retirement holds a position as a classroom teacher or full-time librarian, or the annual death benefit annuity based on the service of a member who at the time of death held a position as a classroom teacher or full-time librarian, may not be less than an amount computed on the basis of the minimum annual salary provided by the Education Code for a classroom teacher or full-time librarian, multiplied by 2.2 [~~two~~] percent for each year of service credit in the retirement system.

SECTION 11. Subchapter C, Chapter 824, Government Code, is amended by adding Section 824.2045 to read as follows:

Sec. 824.2045. PARTIAL LUMP-SUM OPTION. (a) A member who is eligible for an unreduced service retirement annuity and is not participating in the deferred retirement option plan under Subchapter I may select a standard service retirement annuity or an optional service retirement annuity described by Section 824.204, together with a partial lump-sum distribution.

(b) The amount of the lump-sum distribution under this section may not exceed the sum of 36 months of a standard service retirement annuity computed without regard to this section.

(c) The service retirement annuity selected by the member shall be actuarially reduced to reflect the lump-sum option selected by the member and shall be actuarially equivalent to a standard or optional service retirement annuity, as applicable, without the partial lump-sum distribution. The annuity and lump sum shall be computed to result in no actuarial loss to the retirement system.

(d) The retiring member may choose a lump sum equal to 12 months of a standard service retirement annuity and payable at the same time that the first monthly payment of the annuity is paid, a lump sum equal to 24 months of a standard annuity and payable in one or two annual payments, or a lump sum equal to 36 months of a standard annuity and payable in one, two, or three annual payments. At the option of the member, a payment under this subsection may be made as provided by Section 825.509.

(e) The amount of the lump-sum distribution will be deducted from any amounts otherwise payable under Section 824.503.

(f) The partial lump-sum option under this section may be elected only once by a member and may not be elected by a retiree. A member retiring under the proportionate retirement program under Chapter 803 is not eligible for the partial lump-sum option.

(g) Before a retiring member selects a partial lump-sum distribution under this section, the retirement system shall provide a written notice to the member of the amount by which the member's annuity will be reduced because of the selection. The member shall be asked to sign a copy of or receipt for the notice, and the retirement system shall maintain the signed copy or receipt.

(h) The board of trustees may adopt rules for the implementation of this section.

SECTION 12. Section 824.402, Government Code, is amended by redesignating existing Subsection (b) as Subsection (c) and adding new Subsection (b) to read as follows:

(b) In addition to the benefits provided under Subsection (a), the designated beneficiary of a member who is an employee of a school district and who dies as the result of a physical assault during the performance of the employee's regular duties is eligible to receive a lump-sum death benefit payment in the amount of $160,000.

(c) The board of trustees by rule may prescribe the manner of payment of benefits under this section.

SECTION 13. Section 824.502, Government Code, is amended to read as follows:

Sec. 824.502. BENEFITS ON DEATH OF DISABILITY RETIREE. The designated beneficiary of a disability retiree who retires before September 1, 1992, who has not selected an optional annuity under Section 824.308, and who dies while receiving a retirement benefit may elect to receive, instead of survivor benefits provided by Section 824.501, a benefit available under Section 824.402, computed as if the decedent had been in service at the time of death.

SECTION 14. Sections 824.602(a) and (d), Government Code, are amended to read as follows:

(a) Subject to Section 825.506, the [~~The~~] retirement system may not, under Section 824.601, withhold a monthly benefit payment if the retiree is employed in a Texas public educational institution:

(1) as a substitute only with pay not more than the daily rate of substitute pay established by the employer and, if the retiree is a disability retiree, the employment has not exceeded a total of 90 days in the school year;

(2) in a position, other than as a substitute, on no more than a one-half time basis for the month;

(3) in one or more positions on as much as a full-time basis, if[~~:~~

[~~(A)~~] the work occurs in not more than six months of a school year that begins after the retiree's effective date of retirement;

[~~(B) the work occurs in no more than six months of the school year; and~~

[~~(C) the retiree executes on a form and within any deadline prescribed by the retirement system a written election to have this exception apply for the school year in determining whether benefits are to be suspended for employment after retirement; or~~]

(4) in a position, other than as a substitute, on no more than a one-half time basis for no more than 90 days in the school year, if the retiree is a disability retiree; or

(5) in a position as a classroom teacher on as much as a full-time basis, if the retiree has retired under Section 824.202(a) without reduction for retirement at an early age, is certified under Subchapter B, Chapter 21, Education Code, to teach the subjects assigned, is teaching in an acute shortage area as defined by the commissioner of education, and has been separated from service with all public schools for at least 12 months.

(d) A retiree to whom [~~who has elected to avoid loss of monthly benefits in a school year pursuant to~~] Subsection (a)(3) applies is not eligible during that school year for any other exceptions to loss of benefits provided in this section. If a retiree is employed under [~~elects~~] the exemption provided in Subsection (a)(3) for a school year, the retirement system must include any previous employment during the school year, including any employment that relied upon the exemptions in Subsection (a)(1) or (a)(2), in determining whether and when the retiree has exceeded six months of employment in the school year.

SECTION 15. Sections 824.804(a) and (d), Government Code, are amended to read as follows:

(a) On the effective date of a member's participation in the plan, the retirement system shall make the transfers required by Section 825.309 to the retired reserve account as if the member had retired on that date. The retirement system shall transfer monthly, during the period of the member's participation in the plan, from the retired reserve account to an account for the member in the deferred retirement option account an amount equal to:

(1) 60 percent of the amount the member would have received that month under a standard service retirement annuity if the member had retired under the multiplier currently in effect; or

(2) if the member began participation in the plan before September 1, 1999, 79 percent of the amount the member would have received that month under a standard service retirement annuity if the member had retired under the multiplier currently in effect [~~on the effective date of plan participation~~].

(d) Payment of the benefit provided under the plan is in addition to any annuity otherwise payable under this subtitle. The retiring member may choose a DROP payment in accordance with the provisions of Section 825.509.

SECTION 16. Section 824.805, Government Code, is amended to read as follows:

Sec. 824.805. TERMINATION OF PARTICIPATION IN PLAN. (a) Except as provided by Subsection (b), a [~~A~~] member terminates participation in the plan by:

(1) retirement;

(2) death; or

(3) expiration of the period for which participation was approved.

(b) A member participating in the plan on September 1, 1999, may, before September 1, 2000, elect to discontinue participation in the plan on a form prescribed by and filed with the retirement system. The retirement system shall make account transfers and change records for a member who elects under this subsection to discontinue participation in the plan as if the member had never participated in the plan.

SECTION 17. Section 825.301, Government Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The board of trustees shall invest and reinvest assets of the retirement system without distinction as to their source in accordance with Section 67, Article XVI, Texas Constitution. For purposes of the investment authority of the board of trustees under Section 67, Article XVI, Texas Constitution, "securities" means any investment instrument within the meaning of the term as defined by Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes), 15 U.S.C. Section 77b(a)(1), or 15 U.S.C. Section 78c(a)(10). An interest in a limited partnership or investment contract is considered a security without regard to the number of investors or the control, access to information, or rights granted to or retained by the retirement system. Any instrument or contract intended to manage transaction or currency exchange risk in purchasing, selling, or holding securities is considered to be a security. Investment decisions are subject to the standard provided in the Texas Trust Code by Section 113.056(a), Property Code.

(a-1) The legislative audit committee shall select an independent firm during the biennium beginning September 1, 1999, to evaluate the retirement system's

investment practices and performance under Subsection (a) as provided by Section 825.512. This subsection expires January 1, 2001.

SECTION 18. The heading of Section 825.303, Government Code, is amended to read as follows:

Sec. 825.303. SECURITIES CUSTODY AND SECURITIES LENDING.

SECTION 19. Section 825.303(a), Government Code, is amended to read as follows:

(a) The retirement system may, in the exercise of its constitutional discretion to manage the assets of the retirement system, select one or more commercial banks, depository trust companies, or other entities to serve as custodian or custodians of the system's securities and to lend the securities under rules adopted by the board of trustees and as required by this section. The retirement system may select one or more commercial banks, depository trust companies, or other entities to act independently of the custodian and lend the securities under board rules and as required by this section.

SECTION 20. Section 825.405(c), Government Code, is amended to read as follows:

(c) Monthly, employers shall:

(1) report to the retirement system in a form prescribed by the system a certification of the total amount of salary paid above the statutory minimum salary and the total amount of employer contributions due under this section for the payroll period; and

(2) retain information, as determined by the retirement system, sufficient to allow administration of this section, [~~The employer's form showing deductions and certification of earnings must provide the retirement system with information sufficient to administer this section, as determined by the system,~~] including information for each employee showing the applicable minimum salary as well as aggregate annual compensation.

SECTION 21. Section 825.406(c), Government Code, is amended to read as follows:

(c) Monthly, employers shall:

(1) report to the retirement system in a form prescribed by the system a certification of the total amount of salary paid from federal funds and private grants and the total amounts provided by the funds and grants for state contributions for the employees; and

(2) retain the following information:

(A) [~~(1)~~] the name of each employee paid in whole or part from a grant;

(B) [~~(2)~~] the source of the grant;

(C) [~~(3)~~] the amount of the employee's salary paid from the grant;

(D) [~~(4)~~] the amount of the money provided by the grant for state contributions for the employee; and

(E) [~~(5)~~] any other information the retirement system determines is necessary to enforce this section.

SECTION 22. Section 825.407(c), Government Code, is amended to read as follows:

(c) The designated disbursing officer of each general academic teaching institution and the designated disbursing officer of each medical and dental unit shall:

(1) submit to the retirement system, at a time and in the manner prescribed by the retirement system, a monthly report containing a certification of the total amount

of salary paid from noneducational and general funds and the total amount of employer contributions due under this section for the payroll period; and

(2) maintain and retain the following information:

(A) [~~(1)~~] the name of each member employed by the institution or unit who, for the most recent payroll period, was paid wholly or partly from noneducational and general funds;

(B) [~~(2)~~] the amount of the employee's salary for the most recent payroll period that was paid from noneducational and general funds;

[~~(3) a certification of the total amount of employer contributions due under this section for the payroll period;~~] and

(C) [~~(4)~~] any other information the retirement system determines is necessary to administer this section.

SECTION 23. Section 825.408(a), Government Code, is amended to read as follows:

(a) An employing district that fails to remit, before the 11th day after the last day of a month, all member and employer deposits and documentation of the deposits required by this subchapter to be remitted by the district for the month shall pay to the retirement system, in addition to the deposits, interest on the unpaid or undocumented amounts at an annual rate compounded monthly. The rate of interest is the rate established under Section 825.313(b)(2), plus two percent. Interest required under this section is creditable to the interest account.

SECTION 24. Section 825.515, Government Code, is amended to read as follows:

Sec. 825.515. INFORMATION ABOUT MEMBER POSITIONS. (a) At least annually, the [~~The~~] retirement system shall acquire and maintain records identifying members and the types of positions they hold [~~have held~~] as members[~~, the length of service in each type of position, and whether service in each type of position is or was as a full-time employee~~]. The type of position shall be identified as Administrative/Professional, Teacher/Full-Time Librarian, Support, or Bus Driver. [~~The retirement system shall cooperate with the commissioner of education in maintaining information about the employment status of members of the retirement system.~~]

(b) [~~Each school year, the retirement system shall provide to the commissioner of education information, of a type and in a form determined by the commissioner, that allows contributing members of the retirement system to be identified in information submitted to the commissioner by school districts under the Education Code.~~

[~~(c)~~] Information contained in records of the retirement system maintained under this section is confidential within the limits prescribed by Section 825.507.

SECTION 25. Sections 825.516(a) and (b), Government Code, are amended to read as follows:

(a) A retiree who is receiving an annuity from the retirement system may request the system to withhold from the retiree's monthly annuity payment membership dues for a nonprofit association of retired school employees in this state, if the association is statewide and its membership includes at least five percent of all retirees of the retirement system. The request for withholding must be on a form provided by the retirement system.

(b) After the retirement system receives a request authorized by this section, the system may [~~shall~~] make the requested deductions until the earlier of:

(1) the date the annuity is terminated; or

(2) the first payment of the annuity after the date the system receives a written request signed by the retiree canceling the request for the withholding.

SECTION 26. Section 16A(d), Article 3.50-4, Insurance Code, is amended to read as follows:

(d) Monthly, employers shall:

(1) report to the trustee in a form prescribed by the trustee a certification of the total amount of salary paid from federal funds and private grants and the total amounts provided by the funds and grants for state contributions for the employees; and

(2) maintain and retain the following information:

(A) [~~(1)~~] the name of each [~~active~~] employee paid in whole or part from a grant;

(B) [~~(2)~~] the source of the grant;

(C) [~~(3)~~] the amount of the [~~active~~] employee's salary paid from the grant;

(D) [~~(4)~~] the amount of the money provided by the grant for state contributions for the [~~active~~] employee; and

(E) [~~(5)~~] any other information the trustee determines is necessary to enforce this section.

SECTION 27. Subchapter E, Chapter 3, Insurance Code, is amended by adding Article 3.50-4A to read as follows:

Art. 3.50-4A. INSURANCE FOR SCHOOL DISTRICT EMPLOYEES AND RETIREES

Sec. 1. DEFINITIONS. In this article:

(1) "Employee" means a person who is a participating member of the Teacher Retirement System of Texas and is not participating in a group insurance program under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code) or the Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code).

(2) "Retiree" means a person who:

(A) has retired under the Teacher Retirement System of Texas with at least 10 years of credit for service in public schools of this state or has retired under that system for disability and is entitled to receive an annuity from the system based on the person's service; and

(B) is not eligible to participate in the group insurance program provided under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code) or the Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code).

(3) "Trustee" means the Teacher Retirement System of Texas.

Sec. 2. INSURANCE COVERAGE. (a) The trustee shall contract with one or more carriers authorized to provide life insurance in this state to offer employees and retirees optional permanent life insurance coverage.

(b) The trustee shall contract with one or more carriers authorized to provide long-term care insurance in this state to offer employees and retirees optional long-term care insurance coverage. The long-term care insurance coverage shall include home, community, and institutional care.

(c) The trustee shall contract with one or more carriers authorized to provide disability insurance in this state to offer employees optional insurance against short-term or long-term loss of salary because of disability.

(d) In contracting for any benefits under this article, competitive bidding shall be required under rules adopted by the trustee. The rules may provide criteria to determine qualified carriers. The trustee is not required to select the lowest bid but also may consider ability to service contracts, past experiences, financial stability, and other relevant criteria. If the trustee awards a contract to an entity whose bid deviates from that advertised, the deviation shall be recorded and the reasons for the deviation shall be fully justified in the minutes of the next meeting of the trustee.

(e) Insurance coverage provided under this section shall be made available periodically during open enrollment periods determined by the trustee.

Sec. 3. ADMINISTRATION. (a) The trustee shall adopt rules for the selection of contractors under this article. The rules must require the contractors to administer enrollment, adjudication of claims, and coordination of services under the insurance coverages and require the contractors to account for premiums collected and disbursed under the coverages.

(b) The trustee may adopt other rules necessary to administer the program provided under this article.

Sec. 4. PARTICIPATION IN COVERAGE. (a) The trustee shall offer the coverages provided under this article to employees through their employers and to retirees through the trustee's administration of the retirement system.

(b) The full cost of premiums in a plan of insurance coverage provided under this article is the responsibility of the enrollees.

(c) An employee participating in a plan of insurance coverage provided under this article shall pay premiums by payroll deduction remitted by the employee's employer at the times and in the manner provided by the trustee.

(d) A retiree participating in a plan of insurance coverage provided under this article shall pay premiums by deduction from the retiree's monthly retirement annuity.

Sec. 5. SCHOOL DISTRICT EMPLOYEES AND RETIREES OPTIONAL INSURANCE TRUST FUND. (a) The school district employees and retirees optional insurance trust fund is created as a trust fund with the comptroller and shall be administered by the trustee on behalf of the participants in the plans of insurance coverage provided under this article.

(b) Premiums paid by enrollees, amounts recovered under contracts for the implementation of the program provided by this article, and investment and depository income of the fund shall be credited to the fund.

(c) Money in the fund may be used only for the purpose of providing the program of insurance coverage provided under this article, including the expenses of administering the program.

(d) The trustee may invest the fund in the manner provided by Section 67(a)(3), Article XVI, Texas Constitution.

SECTION 28. Sections 22.004(c) and (d), Education Code, are amended to read as follows:

(c) Each district shall report the district's compliance with this subsection to the executive director of the Teacher Retirement System of Texas not later than March [~~November~~] 1 of each even-numbered year in the manner required by the board of trustees of the Teacher Retirement System of Texas. The report must be based on the district group health coverage plan in effect during the current plan year [~~on November 1~~] and must include:

(1) appropriate documentation of:

(A) the district's contract for group health coverage with a provider licensed to do business in this state by the Texas Department of Insurance or a risk pool authorized under Chapter 172, Local Government Code; or

(B) a resolution of the board of trustees of the district authorizing a self-insurance plan for district employees and of the district's review of district ability to cover the liability assumed;

(2) the schedule of benefits;

(3) the premium rate sheet, including the amount paid by the district and employee;

(4) the number of employees covered by each health coverage plan offered by the district; and

(5) any other information considered appropriate by the executive director of the Teacher Retirement System of Texas.

(d) Based on the criteria prescribed by Subsection (a), the executive director of the Teacher Retirement System of Texas shall certify whether a district's coverage is comparable to the basic health coverage provided under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code). If the executive director of the Teacher Retirement System of Texas determines that the group health coverage offered by a district is not comparable, the executive director shall report that information to the district and to the Legislative Budget Board. The executive director shall submit a report to the legislature not later than September [~~January~~] 1 of each even-numbered [~~odd-numbered~~] year describing the status of each district's group health coverage program based on the information contained in the report required by Subsection (c) and the certification required by this subsection.

SECTION 29. (a) Monthly payments of a death or retirement benefit annuity by the Teacher Retirement System of Texas are increased beginning with the payment due at the end of September 1999.

(b) The increase does not apply to payments under Section 824.304(a), 824.404, or 824.501, Government Code.

(c) Except as provided by Subsection (d) of this section, the amount of the monthly increase is computed by multiplying the previous monthly benefit by a percentage determined in accordance with the following table:

| LATEST RETIREMENT DATE OR, IF APPLICABLE, DATE OF DEATH | INCREASE |
|---|---|
| Before September 1, 1973 | 5% |
| On or after September 1, 1973, but before September 1, 1974 | 6% |
| On or after September 1, 1974, but before September 1, 1979 | 5% |
| On or after September 1, 1979, but before September 1, 1981 | 6% |
| On or after September 1, 1981, but before September 1, 1982 | 7% |
| On or after September 1, 1982, but before September 1, 1983 | 6% |
| On or after September 1, 1983, but before September 1, 1990 | 7% |
| On or after September 1, 1990, but before September 1, 1991 | 6% |
| On or after September 1, 1991, but before September 1, 1992 | 7% |
| On or after September 1, 1992, but before September 1, 1995 | 6% |
| On or after September 1, 1995, but before September 1, 1997 | 5% |
| On or after September 1, 1997, but before September 1, 1998 | 2% |

(d) After making the computations required by Subsection (c) of this section, the retirement system shall increase each annuity payable by the system on September 1, 1999, other than an annuity under Section 824.304(a), 824.404, or 824.501, Government Code, by 10 percent, which is a benefit equivalent to the benefit provided by using a 2.2 percent multiplier for computing annuities.

SECTION 30. (a) Notwithstanding Section 824.1011, Government Code, as amended by this Act, a person who is receiving a standard service or disability retirement annuity under Section 824.203 or 824.304(b), Government Code, on the effective date of this Act and who married after retirement but before that date may, before September 1, 2000, replace the annuity by selecting an optional annuity and designating the person's spouse as beneficiary as if the person had married after the effective date of this Act.

(b) Notwithstanding Section 824.1011, Government Code, as amended by this Act, a person who retired before September 1, 1992, and is receiving a standard disability retirement annuity under Section 824.304(b), Government Code, on the effective date of this Act may before September 1, 2001, replace the annuity by selecting an optional annuity described by Section 824.308, Government Code. An optional annuity selected under this subsection shall be actuarially reduced according to the ages of the retiree and the designated beneficiary at the time the annuity is selected.

SECTION 31. This Act takes effect September 1, 1999, except Section 14, which takes effect at the beginning of the 1999-2000 school year.

SECTION 32. 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.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON**
**HOUSE BILL 1376**

Senator Carona 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 1376** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

| | |
|---|---|
| CARONA | BOSSE |
| MADLA | ALEXANDER |
| FRASER | UHER |

| | |
|---|---|
| JACKSON | HILBERT |
| WHITMIRE | NORIEGA |
| 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 1140**

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 1140** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

| | |
|---|---|
| ARMBRISTER | THOMPSON |
| WHITMIRE | JIM SOLIS |
| BIVINS | HINOJOSA |
| MONCRIEF | |
| 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 1622**

Senator Harris 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 1622** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

| | |
|---|---|
| HARRIS | GOODMAN |
| MADLA | NAISHTAT |
| ELLIS | A. REYNA |
| | TRUITT |
| 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 1498**

Senator Sibley submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 1498** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| SIBLEY | JANEK |
| JACKSON | EILAND |
| MADLA | SIEBERT |
| OGDEN | VAN DE PUTTE |
| 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 3304**

Senator Sibley submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 3304** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| SIBLEY | THOMPSON |
| CAIN | JIM SOLIS |
| ARMBRISTER | CAPELO |
| | HINOJOSA |
| | HARTNETT |
| 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 1283**

Senator Brown submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 1283** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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|---|---|
| BROWN | COUNTS |
| ARMBRISTER | COOK |
| BERNSEN | T. KING |
| RATLIFF | 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 352**

Senator Brown submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 352** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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|---|---|
| BROWN | DENNY |
| LINDSAY | ALEXANDER |
| MONCRIEF | Y. DAVIS |
| MADLA | MADDEN |
| ARMBRISTER | |
| 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 153

Senator Moncrief submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 153** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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|---|---|
| MONCRIEF | NIXON |
| RATLIFF | DUNNAM |
| ARMBRISTER | HINOJOSA |
| WHITMIRE | KEEL |
| | TALTON |
| 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 2031

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 2031** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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|---|---|
| ARMBRISTER | KUEMPEL |
| SHAPLEIGH | B. TURNER |
| SHAPIRO | DRIVER |
| ZAFFIRINI | BERMAN |
| | NAJERA |
| 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 577**

Senator Nelson 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 577** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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|---|---|
| NELSON | GIDDINGS |
| SHAPIRO | DUTTON |
| MONCRIEF | HINOJOSA |
| ARMBRISTER | S. TURNER |
| JACKSON | |
| 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 947**

Senator Barrientos submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 947** 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.

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| BARRIENTOS | MAXEY |
| ZAFFIRINI | FARABEE |
| CAIN | WOHLGEMUTH |
| WEST | F. BROWN |
| NELSON | |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to the authority of the board of regents of The University of Texas System to increase the student union fee at The University of Texas at Austin and to the use of the student union fee.

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

SECTION 1. Subsection (a), Section 54.530, Education Code, is amended to read as follows:

(a) The board of regents of The University of Texas System may levy and collect from each student a compulsory fee for operating, maintaining, improving, equipping, and/or constructing additions to the existing Texas Union building near Guadalupe Street. Unless the board increases the amount as provided by this subsection, the fee may not [~~to~~] exceed $33 for each regular semester and $16.50 for each term of each summer session. The money collected from the[~~, with such~~] fees shall [~~to~~] be deposited to an account known as the Texas Union Fee Account. With the concurrence of the student fees advisory committee, the board may increase the amount of the [~~, this~~] fee [~~may be raised~~] to an amount that is not more than 10 percent of the amount imposed in the preceding academic year. The board may increase the amount of the fee to an amount that is more than 10 percent of the amount imposed in the preceding academic year [~~not to exceed $40 for each regular semester and $20 for each term of each summer session~~] if that increase in the fee is approved by a majority vote of those students participating in a general election called for that purpose. However, the board may not increase the amount of the fee to an amount that is more than $50 for each regular semester and $30 for each term of each summer session. The activities of said Texas Union building financed in whole or in part by the [~~this~~] fee shall be limited to those activities in which the entire student body is eligible to participate, and in no event shall any of the activities so financed be held outside of the territorial limits of the campus of The University of Texas at Austin.

SECTION 2. (a) A review panel consisting of three members appointed under this section and financed by the office of the vice president for student affairs at The University of Texas at Austin shall conduct an external review of the operation of the Texas Union to ensure the appropriate use of the student union fee imposed by Section 54.530, Education Code. The review shall include an examination of management decisions and other areas relating to the operation of the Texas Union as necessary. Not later than the first day of the 2000 fall semester, the review panel shall make to the Board of Directors of the Texas Union related recommendations on ways to improve the facilities and operations of the Texas Union.

(b) The vice president for student affairs at The University of Texas at Austin shall compile a list of seven proposed members of the review panel, which must consist of current or former student union directors, associate student union directors, or college or university vice presidents with student union experience. A proposed member of the review panel may have acquired the necessary union experience at a college or university in or outside of this state. The vice president for student affairs may not serve on the review panel.

(c) The vice president for student affairs at The University of Texas at Austin shall submit the list to a student committee consisting of five representatives to the Student Assembly of The University of Texas at Austin, to be selected by the Student Assembly. The student committee shall select three persons from the list submitted by

the vice president for student affairs to constitute the review panel. If a vacancy occurs on the review panel, the student committee shall select another person from the list to fill the vacant position. The selections of the student committee, including any replacement selections, are final unless a proposed member is unable to serve, in which event the student committee shall select a replacement.

(d) If, at any time, the list of proposed members of the review panel consists of fewer than five persons, the vice president for student affairs at The University of Texas at Austin shall submit to the student committee additional names as necessary to restore the list of proposed members to seven.

(e) This section expires January 1, 2001.

SECTION 3. Section 1 of this Act applies beginning with the 1999 fall semester and applies to fees charged for or after that semester. Fees charged before the 1999 fall semester are governed by the law in effect at the time the fees are charged, and that law is continued in effect for that purpose.

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 Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2434**

Senator Moncrief submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 2434** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| MONCRIEF | UHER |
| MADLA | TILLERY |
| NIXON | GREENBERG |
| LINDSAY | CARTER |
| ELLIS | |
| 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 560

Senator Sibley submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 560** 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.

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| SIBLEY | GOODMAN |
| ARMBRISTER | MCCALL |
| FRASER | VAN DE PUTTE |
| MADLA | |
| On the part of the Senate | On the part of the House |

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), (7), 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.

(7) "Pricing flexibility" includes:

(A) customer specific contracts;

(B) packaging of services;

(C) volume, term, and discount pricing;

(D) zone density pricing, with a zone to be defined as an exchange; and

(E) other promotional pricing.

(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 not to be a predatory price.

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, S.B. No. 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 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.

(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. 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.

SECTION 15. 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 16. 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 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 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, or preclude such an advanced services affiliate from using any form of pricing flexibility, with regard to services other than those subject to the restrictions provided by this subsection. This subsection does not preclude a long distance affiliate from using any form of pricing flexibility with regard to services other than those services subject to the restrictions provided by this subsection. In addition, the affiliate holding the certificate of operating authority or service provider certificate of operating authority may not offer, in an area for which the affiliated incumbent local exchange company holds a certificate of convenience and necessity, a service listed in Sections 58.151(1)-(4) as a component of a package of services, as a promotional offering, or with a volume or term discount until the affiliated incumbent local exchange company may offer those services in pricing flexibility offerings in accordance with Section 58.004, unless the customer of one of these pricing flexibility offerings is a federal, state, or local governmental entity. The commission has the authority to enforce this subsection.

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 17. 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.

SECTION 18. 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 19. 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 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.

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

SECTION 20. 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 21. 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 basic 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 22. 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 23. Section 56.021, Utilities Code, as amended by Section 18.08, S.B. No. 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 24. 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 25. 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 26. 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 27. 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 28. 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 29. 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 30. 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.

SECTION 31. 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 32. 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.

SECTION 33. 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, but subject to Subsection (b), 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, 2003, 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) The requirements prescribed by Subsection (a) do not apply to an electing company serving fewer than five million access lines after the date on which it completes the infrastructure improvements described in this subsection. The electing company must also notify the commission of the company's binding commitment to make the following infrastructure improvements not later than September 1, 2000:

(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 34. Subchapter A, Chapter 58, Utilities Code, is amended by adding Section 58.004 to read as follows:

Sec. 58.004. PACKAGING, TERM AND VOLUME DISCOUNTS, AND PROMOTIONAL OFFERINGS. (a) Notwithstanding any other provision of this chapter, an electing company that has more than five million access lines in this state may not offer in an exchange a service listed in Sections 58.151(1)-(4) as a component of a package of services or as a promotional offering until the company makes the reduction in switched access service rates required by Section 58.301(2) unless the customer of one of the pricing flexibility offerings described in this subsection is a federal, state, or local governmental entity.

(b) Notwithstanding any other provision of this chapter, an electing company that has more than five million access lines in this state may not offer a volume or term discount on any service listed in Sections 58.151(1)-(4) until September 1, 2000, unless the customer of one of the pricing flexibility offerings described in this subsection is a federal, state, or local governmental entity.

(c) Notwithstanding any other provision of this chapter, an electing company that has more than five million access lines in this state may offer in an exchange a service listed in Sections 58.051(a)(1)-(4) as a component of a package of services, as a promotional offering, or with a volume or term discount on and after September 1, 1999.

SECTION 35. 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 36. 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 37. 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 38. 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 39. 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 40. 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 41. 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 42. 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 43. 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 44. 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 45. 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 46. 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 47. 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 48. 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 49. 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 50. 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 51. 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 52. 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 53. Section 62.108, Utilities Code, is amended to read as follows:

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

SECTION 54. Section 62.136, Utilities Code, is amended to read as follows:

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

SECTION 55. 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; or

(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.

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

SECTION 57. The following provisions of the Utilities Code are repealed:

(1) Section 58.062; and

(2) Subchapter D, Chapter 58.

SECTION 58. This Act takes effect September 1, 1999.

SECTION 59. 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.

The Conference Committee Report was filed with the Secretary of the Senate.

## CONFERENCE COMMITTEE REPORT ON SENATE BILL 982

Senator Madla submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 982** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

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| MADLA | VAN DE PUTTE |
| NIXON | THOMPSON |
| LINDSAY | BURNAM |
| LUCIO | EILAND |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to persons authorized to provide diabetes self-management training.

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

SECTION 1. It is the intent of the legislature that the health care providers authorized by this Act to provide diabetes self-management training or a component of diabetes self-management training be skilled and experienced professionals with education in diabetes, educational principles, and behavior strategies necessary to meet the needs of a patient diagnosed with diabetes and, to the extent possible, that the health care providers coordinate the care provided to the patient.

SECTION 2. Section 1, Article 21.53G, Insurance Code, is amended by adding Subdivision (5) to read as follows:

(5) "Nutrition counseling" has the meaning assigned by Section 2, Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes).

SECTION 3. Section 4, Article 21.53G, Insurance Code, is amended to read as follows:

Sec. 4. DIABETES SELF-MANAGEMENT TRAINING. (a) Diabetes self-management training under this article must be provided by a health care practitioner or provider who is licensed, registered, or certified in this state to provide appropriate health care services and who is acting within the scope of practice authorized by the practitioner's or provider's license, registration, or certification. Self-management training includes:

(1) training provided to a qualified insured after the initial diagnosis of diabetes in the care and management of that condition, including nutrition [~~nutritional~~] counseling and proper use of diabetes equipment and supplies;

(2) additional training authorized on the diagnosis of a physician or other health care practitioner of a significant change in the qualified insured's symptoms or condition that requires changes in the qualified insured's self-management regime; and

(3) periodic or episodic continuing education training when prescribed by an appropriate health care practitioner as warranted by the development of new techniques and treatments for diabetes.

(b) Coverage for diabetes self-management training provided by a health benefit plan under this article to a qualified insured must include coverage for the following, if provided on the written order of a physician or health care practitioner, including the written order of a health care practitioner practicing under protocols jointly developed with a physician:

(1) a diabetes self-management training program recognized by the American Diabetes Association;

(2) diabetes self-management training given by a multidisciplinary team:

(A) the non-physician members of which are coordinated by:

(i) a diabetes educator who is certified by the National Certification Board for Diabetes Educators; or

(ii) a person who has completed at least 24 hours of continuing education that meets guidelines established by the Texas Board of Health and that includes a combination of diabetes-related educational principles and behavioral strategies;

(B) that consists of at least a licensed dietitian and a registered nurse and may include a pharmacist and a social worker; and

(C) each member of which, other than a social worker, has recent didactic and experiential preparation in diabetes clinical and educational issues as determined by the member's licensing agency, in consultation with the commissioner of public health, unless the member's licensing agency, in consultation with the commissioner of public health, determines that the core educational preparation for the member's license includes the skills the member needs to provide diabetes self-management training;

(3) diabetes self-management training provided by a diabetes educator certified by the National Certification Board for Diabetes Educators; or

(4) diabetes self-management training in which one or more of the following components are provided:

(A) the nutrition counseling component provided by a licensed dietitian, for which the licensed dietitian shall be paid;

(B) the pharmaceutical component provided by a pharmacist, for which the pharmacist shall be paid;

(C) any component of the training provided by a physician assistant or registered nurse, for which the physician assistant or registered nurse shall be paid, except that the physician assistant or registered nurse may not be paid for providing a nutrition counseling or pharmaceutical component unless a licensed dietitian or pharmacist is unavailable to provide that component; or

(D) any component of the training provided by a physician.

(c) A person may not provide a component of diabetes self-management training under Subsection (b)(4) unless the subject matter of the component is within the scope of the person's practice and the person meets the education requirements, as determined by the person's licensing agency, in consultation with the commissioner of public health.

SECTION 4. This Act takes effect September 1, 1999, and applies only to a health benefit plan that is delivered, issued for delivery, or renewed on or after

January 1, 2000. A health benefit plan that is delivered, issued for delivery, or renewed before January 1, 2000, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 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.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2896**

Senator Moncrief submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 2896** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| MONCRIEF | COLEMAN |
| LINDSAY | DELISI |
| NELSON | GRAY |
| SHAPLEIGH | MAXEY |
| WEST | WEST |
| 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 1123**

Senator Cain submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 1123** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| CAIN | THOMPSON |
| WENTWORTH | HINOJOSA |

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| ELLIS | DESHOTEL |
| HARRIS | |
| DUNCAN | |
| 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 3793**

Senator Sibley submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 3793** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| SIBLEY | AVERITT |
| ARMBRISTER | WOHLGEMUTH |
| BROWN | R. LEWIS |
| LUCIO | DUNNAM |
| | COUNTS |
| 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 1884**

Senator Harris submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 1884** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| HARRIS | GRUSENDORF |
| ELLIS | GOODMAN |
| MADLA | PICKETT |
| 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 3016

Senator Sibley submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 3016** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| SIBLEY | SMITHEE |
| ARMBRISTER | BURNAM |
| NELSON | EILAND |
| 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 1861

Senator Shapleigh submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 1861** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| SHAPLEIGH | GUTIERREZ |
| LUCIO | OLIVEIRA |
| MADLA | ALEXANDER |
| SHAPIRO | NORIEGA |
| | HILL |
| 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 2641

Senator Brown submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 2641** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| BROWN | GRAY |
| ZAFFIRINI | MCCALL |
| MADLA | BOSSE |
| 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 846

Senator Brown submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 846** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| BROWN | R. LEWIS |
| ARMBRISTER | COOK |
| LUCIO | T. KING |
| WENTWORTH | PUENTE |
| | COUNTS |
| 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 1939**

Senator Harris submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 1939** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| HARRIS | GRUSENDORF |
| JACKSON | GOODMAN |
| SHAPIRO | HINOJOSA |
| | SMITH |
| 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 3549**

Senator Wentworth submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 3549** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| WENTWORTH | HEFLIN |
| BROWN | CRADDICK |
| CAIN | Y. DAVIS |
| RATLIFF | KEFFER |
| | MCCALL |
| 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 542

Senator Fraser submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 542** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| FRASER | BRIMER |
| LUCIO | WOOLLEY |
| CARONA | DUKES |
| MADLA | CORTE |
| JACKSON | |
| 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 2947

Senator Harris 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 2947** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| HARRIS | GOODMAN |
| ELLIS | P. KING |
| DUNCAN | NAISHTAT |
| 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 1615

Senator Lucio submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 1615** 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.

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|---|---|
| LUCIO | JIM SOLIS |
| TRUAN | MCCLENDON |
| ZAFFIRINI | COLEMAN |
| WENTWORTH | HINOJOSA |
| BROWN | DELISI |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to the creation and operation of health services districts; granting the authority to issue bonds.

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

SECTION 1. Subtitle D, Title 4, Health and Safety Code, is amended by adding Chapter 287 to read as follows:

CHAPTER 287. HEALTH SERVICES DISTRICTS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 287.001. DEFINITIONS. In this chapter:

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

(2) "District" means a health services district created under this chapter.

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

Sec. 287.002. DISTRICT AUTHORIZATION. A health services district may be created and established and, if created, must be maintained, operated, and financed in the manner provided by this chapter.

[Sections 287.003-287.020 reserved for expansion]
SUBCHAPTER B. CREATION OF DISTRICT

Sec. 287.021. CREATION BY CONCURRENT ORDERS. (a) Except as provided by Subsection (b), a county or hospital district and one or more other counties or hospital districts may create a health services district by adopting concurrent orders.

(b) A county or portion of a county that is in the boundaries of a hospital district may not be a party to the creation of a health services district or to a contract with a health services district. The hospital district that serves the county or portion of the county may create and contract with the health services district for the boundaries of the hospital district.

(c) A concurrent order to create a health services district must:

(1) be approved by the governing body of each creating county and hospital district;

(2) contain identical provisions; and

(3) define the boundaries of the district to be coextensive with the combined boundaries of each creating county and hospital district.

(d) A concurrent order to create a health services district adopted by a hospital district for which the tax rate is set by the commissioners court of the county in which the hospital district operates must be approved by the commissioners court of that county.

Sec. 287.022. CONTRACT TERMS. (a) A county or hospital district that creates a district under this chapter shall contract with the district to provide, at a minimum, the health care services the county or hospital district is required to provide by law or under the constitution. A contract with a county or hospital district that created the health services district under this chapter must:

(1) state the term of the contract, not to exceed six years;

(2) specify the purpose, terms, rights, and duties of the district, as authorized by this chapter;

(3) specify the financial contributions to be made by each party to the contract to fund the district, as described by Section 287.024; and

(4) specify the land, buildings, improvements, equipment, and other assets owned by a party to the contract that the district will be required to manage and operate.

(b) Chapter 791, Government Code, does not apply to a contract made under this chapter.

Sec. 287.023. PURPOSE AND DUTIES. (a) A health services district shall:

(1) provide health care services to indigent residents of the district;

(2) manage the funds contributed to the district by each county or hospital district that contracts with the district; and

(3) plan and coordinate with public and private health care providers and entities for the long-term provision of health care services to residents of the district.

(b) A health services district may:

(1) provide health care services on a sliding-fee scale to residents of the district who do not meet the basic income and resources requirements established under Sections 61.006 and 61.008 to be eligible for assistance under Chapter 61 but who are unable to pay for the full cost of health care services; and

(2) assume responsibility for management and operation of the land, buildings, improvements, equipment, and other assets that are acquired by the district or for which the district agrees to assume responsibility under the terms of the contract.

(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.

Sec. 287.024. FUNDING. (a) Each county or hospital district that contracts with the district shall contribute to the district for its operation:

(1) a specified dollar amount from or a percentage of the contracting entity's operating budget and reserves if the contracting entity is a hospital district;

(2) a specified percentage, not less than the percentage required under Section 61.037 for state assistance, of the contracting entity's general revenue levy for each state fiscal year for the term of the contract, if the contracting entity is a county;

(3) state assistance received under Chapter 61;

(4) federal matching funds received by a hospital district under the Medicaid disproportionate share program; and

(5) any funds that are:

(A) received under the Agreement Regarding Disposition of Settlement Proceeds dated July 18, 1998, or July 24, 1998, and filed in the United States District Court, Eastern District of Texas, in the case styled The State of Texas v. The American Tobacco Company, et al., No. 5-96CV-91; and

(B) received on or after the date on which the district is created and before the district is dissolved.

(b) The district shall maintain an accounting of the funds received from each county or hospital district that contracts with the district.

(c) The district may administer the financial contributions of all parties to the contract for district purposes.

[Sections 287.025-287.040 reserved for expansion]

SUBCHAPTER C. DISTRICT ADMINISTRATION

Sec. 287.041. BOARD OF DIRECTORS. (a) A county or hospital district that creates the district and has a population of 125,000 or more shall appoint one director to the board for every 125,000 persons in the population of the county or hospital district, rounded to the nearest 125,000.

(b) A county or hospital district that creates the district and has a population of less than 125,000 may appoint one director to the board.

(c) The county judges of a county that creates the district shall appoint the directors to the board on behalf of the county. The board of directors of a hospital district that creates the district shall appoint the directors to the board on behalf of the hospital district.

(d) Directors serve staggered two-year terms, with as near as possible to one-half of the directors' terms expiring each year.

(e) The number of directors appointed to the board by each county or hospital district that creates the district is determined at the time of the initial appointment of directors under this section and does not vary with subsequent variations in the population of the county or hospital district.

Sec. 287.042. QUALIFICATIONS FOR OFFICE. (a) To be eligible to serve as a director, a person must be a resident of the county or hospital district that appoints the person under Section 287.041.

(b) An employee of the district may not serve as a director.

Sec. 287.043. BOND. (a) Before assuming the duties of the office, each director must execute a bond for $5,000 payable to the district, conditioned on the faithful performance of the person's duties as director.

(b) The bond shall be kept in the permanent records of the district.

(c) The board may pay for directors' bonds with district funds.

Sec. 287.044. BOARD VACANCY. A vacancy in the office of director shall be filled for the unexpired term in the same manner as the original appointment.

Sec. 287.045. OFFICERS. (a) The board shall elect from among its members a president and a vice president.

(b) The board shall appoint a secretary, who need not be a director.

Sec. 287.046. OFFICERS' TERMS; VACANCY. (a) Each officer of the board serves for a term of one year.

(b) The board shall fill a vacancy in a board office for the unexpired term.

Sec. 287.047. COMPENSATION. (a) Directors and officers serve without compensation but may be reimbursed for actual expenses incurred in the performance of official duties.

(b) Expenses reimbursed under this section must be:

(1) reported in the district's minute book or other district records; and

(2) approved by the board.

Sec. 287.048. VOTING REQUIREMENT. A majority of the members of the board voting must concur in a matter relating to the business of the district.

Sec. 287.049. ADMINISTRATOR AND ADDITIONAL STAFF. (a) The board may appoint qualified persons as administrator of the district and as additional administrative staff members as the board considers necessary for the efficient operation of the district.

(b) The administrator and other administrative staff members serve at the will of the board.

(c) The administrator and other administrative staff members are entitled to compensation as determined by the board.

(d) Before assuming the administrator's duties, the administrator shall execute a bond payable to the health services district in an amount not less than $5,000 as determined by the board, conditioned on the faithful performance of the administrator's duties under this chapter. The board may pay for the bond with district funds.

Sec. 287.050. APPOINTMENTS TO STAFF. The board may:

(1) appoint to the staff any doctors the board considers necessary for the efficient operation of the district; and

(2) make temporary appointments the board considers necessary.

Sec. 287.051. TECHNICIANS, NURSES, AND OTHER DISTRICT EMPLOYEES. (a) The district may employ technicians, nurses, fiscal agents, accountants, architects, additional attorneys, and other necessary employees.

(b) The board may delegate to the administrator the authority to employ persons for the district.

Sec. 287.052. GENERAL DUTIES OF ADMINISTRATOR. The administrator shall:

(1) supervise the work and activities of the district; and

(2) direct the general affairs of the district, subject to the limitations prescribed by the board.

Sec. 287.053. RETIREMENT BENEFITS. The board may provide retirement benefits for employees of the district by:

(1) establishing or administering a retirement program; or

(2) electing to participate in the Texas County and District Retirement System or in any other statewide retirement system in which the district is eligible to participate.

[Sections 287.054-287.070 reserved for expansion]

SUBCHAPTER D. POWERS AND DUTIES

Sec. 287.071. RESPONSIBILITY OF GOVERNMENTAL ENTITY. On creation of a district, a county or hospital district that creates the district may transfer to the district:

(1) management and operation of any land, buildings, improvements, and equipment related to the health care system located wholly in the district that are owned by the county or hospital district in which the district is located, as specified in the contract with the counties and hospital districts that created the district; and

(2) operating funds and reserves for operating expenses and funds that have been budgeted by the county or hospital district in which the district is located to provide medical care for residents of the district, as specified in the contract with the counties and hospital districts that created the district.

Sec. 287.072. DISTRICT RESPONSIBILITIES. On creation of a district, the district assumes the duties required under Section 287.023 and any additional duties specified in the contract with the counties and hospital districts that created the district.

Sec. 287.073. MANAGEMENT, CONTROL, AND ADMINISTRATION. The board shall manage, control, and administer the health care system and the funds and resources of the district that are transferred under Section 287.071.

Sec. 287.074. DISTRICT RULES. The board may adopt rules governing the operation of the district and the duties, functions, and responsibilities of district staff and employees.

Sec. 287.075. METHODS AND PROCEDURES. The board may prescribe:

(1) the method of making purchases and expenditures by and for the district; and

(2) accounting and control procedures for the district.

Sec. 287.076. HEALTH CARE PROPERTY, FACILITIES, AND EQUIPMENT. (a) The board shall determine:

(1) the type, number, and location of buildings required to establish and maintain an adequate health care system; and

(2) the type of equipment necessary for health care.

(b) The board may:

(1) acquire property, facilities, and equipment for the district for use in the health care system;

(2) mortgage or pledge the property, facilities, or equipment acquired as security for the payment of the purchase price;

(3) transfer by lease to physicians, individuals, companies, corporations, or other legal entities or acquire by lease district health care facilities;

(4) sell or otherwise dispose of property, facilities, or equipment acquired by the district; and

(5) contract with a state agency or other qualified provider to provide services.

Sec. 287.077. CONSTRUCTION CONTRACTS. (a) The board may enter into construction contracts for the district.

(b) The board may enter into construction contracts that involve spending more than $10,000 only after competitive bidding as provided by Subchapter B, Chapter 271, Local Government Code.

(c) Chapter 2253, Government Code, as it relates to performance and payment bonds, applies to construction contracts let by the district.

Sec. 287.078. DISTRICT OPERATING AND MANAGEMENT CONTRACTS. The board may enter into operating or management contracts relating to health care facilities owned by the district or for which the district assumes responsibility for managing and operating under the terms of the contract with the counties and hospital districts that created the district.

Sec. 287.079. PAYMENT FOR HEALTH CARE SERVICES. (a) The district without charge shall supply to a patient residing in the district the care and treatment that the patient or a relative of the patient who is legally responsible for the patient's support cannot pay.

(b) Not later than the first day of each operating year, the district shall adopt an application procedure to determine eligibility for assistance that complies with Section 61.053.

(c) The administrator of the district may have an inquiry made into the financial circumstances of:

(1) a patient residing in the district and admitted to a district facility; and

(2) a relative of the patient who is legally responsible for the patient's support.

(d) The board may adopt a sliding-fee scale for health care services provided to a patient who can pay for some, but not all, of the care and treatment provided by the district.

(e) A county that created and contracted with the district may credit a district expenditure for the care and treatment of an eligible county resident to the same extent and in the same manner the county would be able to claim the expenditure under Chapter 61 if the county made the expenditure.

(f) The board shall adopt rules regarding the collection of money that is owed to the district for health care services provided to a patient who is determined to be able to pay for all or any part of the services from a patient, a patient's estate, or a relative who is legally responsible for the patient's support.

Sec. 287.080. REIMBURSEMENT FOR SERVICES. (a) The board shall require reimbursement from a county, municipality, or public hospital located outside the boundaries of the district for the district's care and treatment of a sick, diseased, or injured person of that county, municipality, or public hospital as provided by Chapter 61.

(b) The board shall require reimbursement from the sheriff or police chief of a county or municipality for the district's care and treatment of a person confined in a jail facility of the county or municipality who is not a resident of the district, as determined in the same manner as the person's residence is determined under Chapter 61.

(c) The board may contract with a state or federal agency or political subdivision of the state to provide health care services.

Sec. 287.081. SERVICE CONTRACTS. The board may contract with a municipality, county, special district, or other political subdivision of the state or with a state or federal agency for the district to:

(1) furnish a mobile emergency medical service; or

(2) provide for the investigatory or welfare needs of inhabitants of the district.

Sec. 287.082. GIFTS AND ENDOWMENTS. On behalf of the district, the board may accept gifts and endowments to be held in trust for any purpose and under any direction, limitation, or provision prescribed in writing by the donor that is consistent with the proper management of the district.

Sec. 287.083. AUTHORITY TO SUE AND BE SUED. The board may sue and be sued on behalf of the district.

[Sections 287.084-287.100 reserved for expansion]

SUBCHAPTER E. DISSOLUTION OF DISTRICT

Sec. 287.101. DISSOLUTION. (a) A district shall be dissolved if:

(1) the contract with the counties and hospital districts that created the district expires and is not renewed; or

(2) the counties and hospital districts that created the district adopt concurrent orders to terminate the contract and dissolve the district and the concurrent orders:

(A) are approved by the governing bodies of each county and hospital district; and

(B) contain identical provisions.

(b) The governing body of a county or hospital district may adopt orders to terminate the contract with the district and end the county's or hospital district's participation in the district. The county or hospital district must give written notice to the district at least one fiscal year, as established by the board under Section 287.121, before terminating the contract and ending participation in the district. On termination of the contract with the district, the district shall transfer to the county or hospital district all unspent funds contributed by the county or hospital district to the district and the land, buildings, improvements, equipment, and other assets acquired by the district that are located in the county or hospital district. The termination of the contract by a county or hospital district does not affect the operation of the district with respect to each other county or hospital district that created the district.

Sec. 287.102. TRANSFER OF ASSETS AFTER DISSOLUTION. (a) If the district is dissolved, the board shall:

(1) transfer the land, buildings, improvements, equipment, and other assets acquired by the district to the county or hospital district in which the property is located; or

(2) administer the property, assets, and debts in accordance with Section 287.103.

(b) If the district transfers its land, buildings, improvements, equipment, and other assets to a county or hospital district, the county or hospital district assumes all debts and obligations of the district related to the land, buildings, improvements, equipment, or assets at the time of the transfer, and the district is dissolved.

Sec. 287.103. ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS AFTER DISSOLUTION. (a) If the district does not transfer its land, buildings, improvements, equipment, and other assets to a county or hospital district in the district, the board shall continue to control and administer the property, debts, and assets of the district until all funds have been disposed of and all district debts have been paid or settled.

(b) If, after administering the property and assets, the board determines that the district's property and assets are insufficient to pay the debts of the district, the district shall transfer the remaining debts to the counties and hospital districts that created the district in proportion to the funds contributed to the district by each county or hospital district.

(c) If, after administering the property and assets, the board determines that unused funds remain, the board shall transfer the unused funds to the counties and hospital districts that created the district in proportion to the funds contributed to the district by each county or hospital district.

Sec. 287.104. ACCOUNTING. After the district has paid all its debts and has disposed of all its assets and funds as prescribed by Sections 287.102 and 287.103, the board shall provide an accounting to each county and hospital district that created and contracted with the district. The accounting must show the manner in which the assets and debts of the district were distributed.

[Sections 287.105-287.120 reserved for expansion]

SUBCHAPTER F. DISTRICT FINANCES

Sec. 287.121. FISCAL YEAR. (a) The district operates on the fiscal year established by the board.

(b) The fiscal year may not be changed if revenue bonds of the district are outstanding or more than once in a 24-month period.

Sec. 287.122. ANNUAL AUDIT. (a) The board annually shall have an independent audit made of the financial condition of the district.

(b) A copy of the audit must be provided to:

(1) each county and hospital district that created and contracted with the district;

(2) each state and federal agency with which the district contracts; and

(3) each other entity that contributes substantial funds to the district.

Sec. 287.123. DISTRICT AUDIT AND RECORDS. The annual audit and other district records are open to inspection during regular business hours at the principal office of the district.

Sec. 287.124. ANNUAL BUDGET. (a) The administrator of the district shall prepare a proposed annual budget for the district.

(b) The proposed budget must contain a complete financial statement, including a statement of:

(1) the outstanding obligations of the district;

(2) the amount of cash on hand to the credit of each fund of the district;

(3) the amount of money received by the district from all sources during the previous year;

(4) the amount of money available to the district from all sources during the ensuing year;

(5) the amount of the balances expected at the end of the year in which the budget is being prepared; and

(6) the estimated amount of revenues and balances available to cover the proposed budget.

Sec. 287.125. NOTICE; HEARING; ADOPTION OF BUDGET. (a) The board shall hold a public hearing on the proposed annual budget.

(b) The board shall publish notice of the hearing in a newspaper of general circulation in the district not later than the 10th day before the date of the hearing.

(c) Any resident of the district is entitled to be present and participate at the hearing.

(d) At the conclusion of the hearing, the board shall adopt a budget by acting on the budget proposed by the administrator. The board may make any changes in the proposed budget that in its judgment the interests of the residents of the district demand.

(e) The budget is effective only after adoption by the board.

Sec. 287.126. AMENDING BUDGET. After adoption, the annual budget may be amended on the board's approval.

Sec. 287.127. LIMITATION OF EXPENDITURES. Money may not be spent for an expense not included in the annual budget or an amendment to it.

Sec. 287.128. SWORN STATEMENT. As soon as practicable after the close of the fiscal year, the administrator shall prepare for the board a sworn statement of the amount of money that belongs to the district and an account of the disbursements of that money.

Sec. 287.129. SPENDING AND INVESTMENT LIMITATIONS. (a) Except for construction contracts under Section 287.077(a) or as provided by Sections 287.142 and 287.143, the district may not incur a debt payable from revenues

of the district other than the revenues on hand or to be on hand in the current and immediately following fiscal year of the district.

(b) The board may invest operating, depreciation, or building reserves only in funds or securities specified by Article 836 or 837, Revised Statutes.

Sec. 287.130. DEPOSITORY. (a) The board shall name at least one bank to serve as depository for district funds.

(b) District funds, other than those invested as provided by Section 287.129(b) and those transmitted to a bank of payment for bonds or obligations issued or assumed by the district, shall be deposited as received with the depository bank and must remain on deposit. This subsection does not limit the power of the board to place a portion of district funds on time deposit or to purchase certificates of deposit.

(c) Before the district deposits funds in a bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation, the bank must execute a bond or other security in an amount sufficient to secure from loss the district funds that exceed the amount secured by the Federal Deposit Insurance Corporation.

Sec. 287.131. AD VALOREM TAXATION. A district may not impose an ad valorem tax.

[Sections 287.132-287.140 reserved for expansion]

SUBCHAPTER G. BONDS

Sec. 287.141. GENERAL OBLIGATION BONDS. A district may not issue general obligation bonds.

Sec. 287.142. REVENUE BONDS. (a) The board may issue revenue bonds to:

(1) purchase, construct, acquire, repair, equip, or renovate buildings or improvements for district purposes;

(2) acquire sites to be used for district purposes; or

(3) acquire and operate a mobile emergency medical service to assist the district in carrying out its purposes.

(b) The bonds must be payable from and secured by a pledge of all or part of the revenues derived from the operation of the district. The bonds may be additionally secured by a mortgage or deed of trust lien on all or part of district property.

(c) The bonds must be issued in the manner provided by Sections 264.042, 264.043, 264.046, 264.047, 264.048, and 264.049 for issuance of revenue bonds by county hospital authorities.

(d) Revenue derived from the operation of the district and pledged to the repayment of revenue bonds issued by the district must be used to repay the principal and interest owed on the bonds before being used to repay any other obligation of the district, including money owed to physicians who are employed by or who contract with the district.

Sec. 287.143. REFUNDING BONDS. (a) Refunding bonds of the district may be issued to refund an outstanding indebtedness the district has issued or assumed.

(b) The bonds must be issued in the manner provided by Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, Vernon's Texas Civil Statutes).

(c) The refunding bonds may be sold and the proceeds applied to the payment of outstanding indebtedness or may be exchanged in whole or in part for not less than a similar principal amount of outstanding indebtedness. If the refunding bonds are to be sold and the proceeds applied to the payment of outstanding indebtedness, the refunding bonds must be issued and payments made in the manner provided by

Chapter 503, Acts of the 54th Legislature, Regular Session, 1955 (Article 717k, Vernon's Texas Civil Statutes).

Sec. 287.144. INTEREST AND MATURITY. District bonds must mature not later than the 50th anniversary of the date of their issuance and must bear interest at a rate not to exceed that provided by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes).

Sec. 287.145. EXECUTION OF BONDS. The president of the board shall execute the bonds in the name of the district, and the secretary of the board shall countersign the bonds in the manner provided by the Texas Uniform Facsimile Signature of Public Officials Act (Article 717j-1, Vernon's Texas Civil Statutes).

Sec. 287.146. APPROVAL AND REGISTRATION OF BONDS. (a) District bonds are subject to the same requirements with regard to approval by the attorney general and registration by the comptroller as the law provides for approval and registration of bonds issued by counties.

(b) On approval by the attorney general and registration by the comptroller, the bonds are incontestable for any cause.

Sec. 287.147. BONDS AS INVESTMENTS. District bonds and indebtedness assumed by the district are legal and authorized investments for:

(1) banks;

(2) savings banks;

(3) trust companies;

(4) savings and loan associations;

(5) insurance companies;

(6) fiduciaries;

(7) trustees;

(8) guardians; and

(9) sinking funds of municipalities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

Sec. 287.148. BONDS AS SECURITY FOR DEPOSITS. District bonds are eligible to secure deposits of public funds of the state and of municipalities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value if accompanied by all unmatured coupons.

Sec. 287.149. TAX STATUS OF BONDS. Because the district created under this chapter is a public entity performing an essential public function, bonds issued by the district, any transaction relating to the bonds, and profits made in the sale of the bonds are free from taxation by the state or by any municipality, county, special district, or other political subdivision of the state.

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 SENATE BILL 138

Senator Sibley submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 138** 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.

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|---|---|
| SIBLEY | HOCHBERG |
| CAIN | DUNNAM |
| OGDEN | SMITH |
| SHAPIRO | SMITHEE |
| WENTWORTH | |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to government restrictions on the exercise of religion.

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

SECTION 1. Title 5, Civil Practice and Remedies Code, is amended by adding Chapter 110 to read as follows:

CHAPTER 110. RELIGIOUS FREEDOM

Sec. 110.001. DEFINITIONS. (a) In this chapter:

(1) "Free exercise of religion" means an act or refusal to act that is substantially motivated by sincere religious belief. In determining whether an act or refusal to act is substantially motivated by sincere religious belief under this chapter, it is not necessary to determine that the act or refusal to act is motivated by a central part or central requirement of the person's sincere religious belief.

(2) "Government agency" means:

(A) this state or a municipality or other political subdivision of this state; and

(B) any agency of this state or a municipality or other political subdivision of this state, including a department, bureau, board, commission, office, agency, council, or public institution of higher education.

(b) In determining whether an interest is a compelling governmental interest under Section 110.003, a court shall give weight to the interpretation of compelling interest in federal case law relating to the free exercise of religion clause of the First Amendment of the United States Constitution.

Sec. 110.002. APPLICATION. (a) This chapter applies to any ordinance, rule, order, decision, practice, or other exercise of governmental authority.

(b) This chapter applies to an act of a government agency, in the exercise of governmental authority, granting or refusing to grant a government benefit to an individual.

(c) This chapter applies to each law of this state unless the law is expressly made exempt from the application of this chapter by reference to this chapter.

Sec. 110.003. RELIGIOUS FREEDOM PROTECTED. (a) Subject to Subsection (b), a government agency may not substantially burden a person's free exercise of religion.

(b) Subsection (a) does not apply if the government agency demonstrates that the application of the burden to the person:

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that interest.

(c) A government agency that makes the demonstration required by Subsection (b) is not required to separately prove that the remedy and penalty provisions of the law, ordinance, rule, order, decision, practice, or other exercise of governmental authority that imposes the substantial burden are the least restrictive means to ensure compliance or to punish the failure to comply.

Sec. 110.004. DEFENSE. A person whose free exercise of religion has been substantially burdened in violation of Section 110.003 may assert that violation as a defense in a judicial or administrative proceeding without regard to whether the proceeding is brought in the name of the state or by any other person.

Sec. 110.005. REMEDIES. (a) Any person, other than a government agency, who successfully asserts a claim or defense under this chapter is entitled to recover:

(1) declaratory relief under Chapter 37;

(2) injunctive relief to prevent the threatened violation or continued violation;

(3) compensatory damages for pecuniary and nonpecuniary losses; and

(4) reasonable attorney's fees, court costs, and other reasonable expenses incurred in bringing the action.

(b) Compensatory damages awarded under Subsection (a)(3) may not exceed $10,000 for each entire, distinct controversy, without regard to the number of members or other persons within a religious group who claim injury as a result of the government agency's exercise of governmental authority. A claimant is not entitled to recover exemplary damages under this chapter.

(c) An action under this section must be brought in district court.

(d) A person may not bring an action for damages or declaratory or injunctive relief against an individual, other than an action brought against an individual acting in the individual's official capacity as an officer of a government agency.

(e) This chapter does not affect the application of Section 498.0045 or 501.008, Government Code, or Chapter 14 of this code.

Sec. 110.006. NOTICE; RIGHT TO ACCOMMODATE. (a) A person may not bring an action to assert a claim under this chapter unless, 60 days before bringing the action, the person gives written notice to the government agency by certified mail, return receipt requested:

(1) that the person's free exercise of religion is substantially burdened by an exercise of the government agency's governmental authority;

(2) of the particular act or refusal to act that is burdened; and

(3) of the manner in which the exercise of governmental authority burdens the act or refusal to act.

(b) Notwithstanding Subsection (a), a claimant may, within the 60-day period established by Subsection (a), bring an action for declaratory or injunctive relief and associated attorney's fees, court costs, and other reasonable expenses, if:

(1) the exercise of governmental authority that threatens to substantially burden the person's free exercise of religion is imminent; and

(2) the person was not informed and did not otherwise have knowledge of the exercise of the governmental authority in time to reasonably provide the notice.

(c) A government agency that receives a notice under Subsection (a) may remedy the substantial burden on the person's free exercise of religion.

(d) A remedy implemented by a government agency under this section:

(1) may be designed to reasonably remove the substantial burden on the person's free exercise of religion;

(2) need not be implemented in a manner that results in an exercise of governmental authority that is the least restrictive means of furthering the governmental interest, notwithstanding any other provision of this chapter; and

(3) must be narrowly tailored to remove the particular burden for which the remedy is implemented.

(e) A person with respect to whom a substantial burden on the person's free exercise of religion has been cured by a remedy implemented under this section may not bring an action under Section 110.005.

(f) A person who complies with an inmate grievance system as required under Section 501.008, Government Code, is not required to provide a separate written notice under Subsection (a). In conjunction with the inmate grievance system, the government agency may remedy a substantial burden on the person's free exercise of religion in the manner described by, and subject to, Subsections (c), (d), and (e).

(g) In dealing with a claim that a person's free exercise of religion has been substantially burdened in violation of this chapter, an inmate grievance system, including an inmate grievance system required under Section 501.008, Government Code, must provide to the person making the claim a statement of the government agency's rationale for imposing the burden, if any exists, in connection with any adverse determination made in connection with the claim.

Sec. 110.007. ONE-YEAR LIMITATIONS PERIOD. (a) A person must bring an action to assert a claim for damages under this chapter not later than one year after the date the person knew or should have known of the substantial burden on the person's free exercise of religion.

(b) Mailing notice under Section 110.006 tolls the limitations period established under this section until the 75th day after the date on which the notice was mailed.

Sec. 110.008. SOVEREIGN IMMUNITY WAIVED. (a) Subject to Section 110.006, sovereign immunity to suit and from liability is waived and abolished to the extent of liability created by Section 110.005, and a claimant may sue a government agency for damages allowed by that section.

(b) Notwithstanding Subsection (a), this chapter does not waive or abolish sovereign immunity to suit and from liability under the Eleventh Amendment to the United States Constitution.

Sec. 110.009. EFFECT ON RIGHTS. (a) This chapter does not authorize a government agency to burden a person's free exercise of religion.

(b) The protection of religious freedom afforded by this chapter is in addition to the protections provided under federal law and the constitutions of this state and the United States. This chapter may not be construed to affect or interpret Section 4, 5, 6, or 7, Article I, Texas Constitution.

Sec. 110.010. APPLICATION TO CERTAIN CASES. Notwithstanding any other provision of this chapter, a municipality has no less authority to adopt or apply laws and regulations concerning zoning, land use planning, traffic management, urban nuisance, or historic preservation than the authority of the municipality that existed under the law as interpreted by the federal courts before April 17, 1990. This chapter does not affect the authority of a municipality to adopt or apply laws and regulations as that authority has been interpreted by any court in cases that do not involve the free exercise of religion.

Sec. 110.011. CIVIL RIGHTS. (a) Except as provided in Subsection (b), this chapter does not establish or eliminate a defense to a civil action or criminal prosecution under a federal or state civil rights law.

(b) This chapter is fully applicable to claims regarding the employment, education, or volunteering of those who perform duties, such as spreading or teaching faith, performing devotional services, or internal governance, for a religious organization. For the purposes of this subsection, an organization is a religious organization if:

(1) the organization's primary purpose and function are religious, it is a religious school organized primarily for religious and educational purposes, or it is a religious charity organized primarily for religious and charitable purposes; and

(2) it does not engage in activities that would disqualify it from tax exempt status under Section 501(c)(3), Internal Revenue Code of 1986, as it existed on August 30, 1999.

Sec. 110.012. GRANT TO RELIGIOUS ORGANIZATION NOT AFFECTED. Notwithstanding Section 110.002(b), this chapter does not affect the grant or denial of an appropriation or other grant of money or benefits to a religious organization, nor does it affect the grant or denial of a tax exemption to a religious organization.

SECTION 2. Subchapter G, Chapter 61, Human Resources Code, is amended by adding Section 61.097 to read as follows:

Sec. 61.097. APPLICATION OF LAW RELATING TO FREE EXERCISE OF RELIGION. For purposes of Chapter 110, Civil Practice and Remedies Code, an ordinance, rule, order, decision, or practice that applies to a person in the custody of a juvenile detention facility or other correctional facility operated by or under a contract with the commission, a county, or a juvenile probation department is presumed to be in furtherance of a compelling governmental interest and the least restrictive means of furthering that interest. The presumption may be rebutted.

SECTION 3. Chapter 76, Government Code, is amended by adding Section 76.018 to read as follows:

Sec. 76.018. APPLICATION OF LAW RELATING TO FREE EXERCISE OF RELIGION. For purposes of Chapter 110, Civil Practice and Remedies Code, an ordinance, rule, order, decision, or practice that applies to a person in the custody of a correctional facility operated by or under a contract with a community supervision and corrections department is presumed to be in furtherance of a compelling governmental interest and the least restrictive means of furthering that interest. The presumption may be rebutted.

SECTION 4. Chapter 493, Government Code, is amended by adding Section 493.023 to read as follows:

Sec. 493.023. APPLICATION OF LAW RELATING TO FREE EXERCISE OF RELIGION. For purposes of Chapter 110, Civil Practice and Remedies Code, an ordinance, rule, order, decision, or practice that applies to a person in the custody of a

jail or other correctional facility operated by or under a contract with the department is presumed to be in furtherance of a compelling governmental interest and the least restrictive means of furthering that interest. The presumption may be rebutted.

SECTION 5. Chapter 361, Local Government Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. RELIGIOUS FREEDOM

Sec. 361.101. APPLICATION OF LAW RELATING TO FREE EXERCISE OF RELIGION. For purposes of Chapter 110, Civil Practice and Remedies Code, an ordinance, rule, order, decision, or practice that applies to a person in the custody of a municipal or county jail or other correctional facility operated by or under a contract with a county or municipality is presumed to be in furtherance of a compelling governmental interest and the least restrictive means of furthering that interest. The presumption may be rebutted.

SECTION 6. This Act applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for this purpose.

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 HOUSE BILL 485**

Senator Madla submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 485** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| MADLA | HILL |
| NIXON | CLARK |
| LUCIO | BAILEY |
| 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 2748

Senator Sibley submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 2748** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| SIBLEY | SMITHEE |
| MADLA | EILAND |
| JACKSON | OLIVO |
| CAIN | |
| 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 3255

Senator Carona submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 3255** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| CARONA | GALLEGO |
| JACKSON | HINOJOSA |
| ARMBRISTER | KEEL |
| SHAPIRO | DUNNAM |
| 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 1275**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 1275** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| ZAFFIRINI | LUNA |
| BARRIENTOS | DUNNAM |
| CARONA | HILL |
| CAIN | SADLER |
| WEST | SMITH |
| 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 104**

Senator Duncan submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 104** 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.

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| DUNCAN | COLEMAN |
| BIVINS | DUNNAM |
| BERNSEN | DUTTON |
| CAIN | SADLER |
| SIBLEY | SMITH |
| On the part of the Senate | On the part of the House |

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. 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.

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 Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON SENATE BILL 1520**

Senator Madla submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 1520** 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.

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| MADLA | ELKINS |
| NIXON | SOLOMONS |
| BROWN | PITTS |
| LUCIO | AVERITT |
| LINDSAY | |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to the sale or transfer of property by certain governmental entities.

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

SECTION 1. Chapter 272, Local Government Code, is amended by adding Section 272.004 to read as follows:

Sec. 272.004. TRANSFERS OF PROPERTY BY CERTAIN POLITICAL SUBDIVISIONS. (a) In this section, "political subdivision" has the same meaning as the term "issuer" under Section 1(1), Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes).

(b) A political subdivision may sell, lease as a lessee or lessor, or otherwise transfer property in the same manner as the subregional board of a regional transportation authority under Sections 452.108(d) and (e), Transportation Code.

(c) A sale, lease, or other transfer of property under this section must be approved by a majority of the voters voting at an election held within the boundaries of the political subdivision if the agreement:

(1) involves the levy by the political subdivision of a tax in an amount sufficient to make payments due under the agreement; and

(2) is executed on or after September 1, 1999.

SECTION 2. Section 452.108(d), Transportation Code, is amended to read as follows:

(d) To provide tax benefits to another party that are available with respect to property under the laws of a foreign country or to encourage private investment with a transportation authority in the United States, and notwithstanding any other provision of this chapter, an authority consisting of one subregion governed by a subregional board created under Subchapter O may enter into and execute, as it considers appropriate, contracts, agreements, notes, security agreements, conveyances, bills of sale, deeds, leases as lessee or lessor, and currency hedges, swap transactions, or agreements relating to foreign and domestic currency. The agreements or instruments may have the terms, maturities, duration, provisions as to governing law, indemnities, and other provisions that are approved by the subregional board. In connection with any transaction authorized by this subsection, the authority may [~~shall~~] deposit in trust, escrow, or similar arrangement cash or lawful investments securities, or may [~~shall~~] enter into one or more payment agreements, financial guarantees, or insurance contracts with counterparties having either a corporate credit or debt rating in any form, a claims-paying ability, or a rating for financial strength of "AA" or better by Moody's Investors Service, Inc. or by Standard & Poor's Corporation or of "A (Class XII)" or better by Best's rating system, that by their terms, including interest to be earned on the cash or securities, or payment obligations, are sufficient in amount to pay when due all amounts required to be paid by the authority as rent over the full term of the transaction plus any optional purchase price or other obligation due under the transaction. [~~A certification in advance by an independent financial expert, banker, or certified public accountant, who is not an employee of the authority, certifying compliance with this requirement constitutes conclusive evidence of compliance.~~]

SECTION 3. The change in law made by this Act applies only to the sale, lease, or other transfer of property on or after the effective date of this Act. The sale, lease, or other transfer of property before the effective date of this Act is governed by the law in effect immediately before the effective date, and that law is continued in effect for that purpose.

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 Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1997**

Senator Madla submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 1997** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| MADLA | PALMER |
| LUCIO | A. REYNA |
| ELLIS | HAGGERTY |
| | YARBROUGH |
| | WILSON |
| 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 913**

Senator Shapleigh submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 913** 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.

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| SHAPLEIGH | OLIVEIRA |
| LUCIO | HAGGERTY |
| ZAFFIRINI | PICKETT |
| SIBLEY | CUELLAR |
| RATLIFF | FLORES |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to the establishment and maintenance of one-stop border inspection stations by the Texas Department of Transportation in Brownsville, Laredo, and El Paso.

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

SECTION 1. Subchapter H, Chapter 201, Transportation Code, is amended by adding Section 201.613 to read as follows:

Sec. 201.613. ONE-STOP BORDER INSPECTION STATIONS. (a) The department shall choose a location for an inspection station along a major highway at or near a border crossing from Mexico in Brownsville, in Laredo, and in El Paso so that all federal, state, and municipal agencies that regulate the passage of persons or vehicles across the border at that border crossing may be located in one place.

(b) The department shall establish and maintain an inspection station at the locations chosen in Subsection (a) only if the federal agencies involved in the regulation of the passage of persons or vehicles at that border crossing agree to the design of the facility at each location and agree to use the facility at each location if built.

(c) The department may enter into agreements with federal, state, and municipal agencies to accomplish the purpose of this section. An agreement may involve the lease of office space at the inspection station by the department to the agency.

SECTION 2. The Texas Department of Transportation shall spend at least $8 million but not more than $9 million of the funds that are appropriated to the department by House Bill No. 1, Acts of the 76th Legislature, Regular Session, 1999 (the General Appropriations Act), for the biennium beginning September 1, 1999, or that are received from the federal government, for the preliminary costs associated with establishing the facilities required by Section 201.613, Transportation Code, as added by this Act, including the design, site selection, purchase, and construction-related costs of the facilities. The department shall apportion the funds in a manner to achieve approximately equal progress in the establishment of the facilities at each location.

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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON**
**HOUSE BILL 564**

Senator Shapleigh submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 564** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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|---|---|
| SHAPLEIGH | OLIVEIRA |
| OGDEN | CHAVEZ |
| LUCIO | CUELLAR |
| SIBLEY | PICKETT |
| TRUAN | GALLEGO |
| 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 2409**

Senator Bernsen submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 2409** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| BERNSEN | T. KING |
| CAIN | HAWLEY |
| ARMBRISTER | SIEBERT |
| JACKSON | PICKETT |
| | HILL |
| 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 2825**

Senator Bernsen submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 2825** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| BERNSEN | ISETT |
| JACKSON | HINOJOSA |
| HAYWOOD | SMITH |
| ARMBRISTER | C. JONES |
| DUNCAN | GREEN |
| 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 370**

Senator Brown submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 370** 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.

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| BROWN | BOSSE |
| ARMBRISTER | GRAY |
| FRASER | MCCALL |
| WHITMIRE | B. TURNER |
| BARRIENTOS | WILSON |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and functions of the Department of Public Safety of the State of Texas; providing penalties.

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

SECTION 1. Subsections (b) and (c), Section 411.002, Government Code, are amended to read as follows:

(b) The department shall have its principal office and headquarters [~~and shall keep all of its records~~] in Austin.

(c) The Department of Public Safety of the State of Texas is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and Subsections (a) and (b) expire September 1, 2009 [~~1999~~].

SECTION 2. Subsection (c), Section 411.0036, Government Code, is amended to read as follows:

(c) If the director has knowledge that a potential ground for removal exists, the director shall notify the chairman of the commission of the potential ground. The chairman shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the chairman, the director shall notify the member with the longest tenure on the commission, other than the chairman, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 3. Subchapter A, Chapter 411, Government Code, is amended by amending Section 411.004 and adding Sections 411.0031 and 411.0041 to read as follows:

Sec. 411.0031. TRAINING FOR COMMISSION MEMBERS. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

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

(1) the legislation that created the department and the commission;

(2) the programs operated by the department;

(3) the role and functions of the department;

(4) the rules of the department, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the department;

(6) the results of the most recent formal audit of the department;

(7) the requirements of:

(A) the open meetings law, Chapter 551;

(B) the public information law, Chapter 552;

(C) the administrative procedure law, Chapter 2001; and

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

(8) any applicable ethics policies adopted by the department or the Texas Ethics Commission.

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

Sec. 411.004. DUTIES AND POWERS OF COMMISSION. The commission shall:

(1) formulate plans and policies for:

(A) enforcement of state criminal, traffic, and safety laws;

(B) prevention of crime;

(C) detection and apprehension of persons who violate laws; and

(D) education of citizens of this state in the promotion of public safety and the observance of law;

(2) organize the department and supervise its operation;

(3) adopt rules considered necessary for carrying out the department's work;

(4) maintain records of all proceedings and official orders; and

(5) biennially submit a report of its work to the governor and legislature, including the commission's and director's recommendations[~~; and~~

[~~(6) provide to its members, as often as necessary, information regarding their qualifications for office under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers~~].

Sec. 411.0041. OPEN MEETINGS EXCEPTION: CRIMINAL INVESTIGATIONS. A discussion or deliberation of the commission regarding an ongoing criminal investigation, including a vote to issue a directive or take other action regarding the investigation, is not subject to the open meetings law, Chapter 551.

SECTION 4. Subsections (b) and (c), Section 411.005, Government Code, are amended to read as follows:

(b) The director may [~~commission shall~~] appoint, with the advice and consent of the commission, [~~an~~] assistant directors [~~director~~] who shall perform the duties that the director designates. An assistant director serves until removed by the director.

(c) The commission shall select the director, and the director shall select an assistant director, on the basis of the person's [~~persons'~~] training, experience, and qualifications for the position [~~positions~~]. The director and an assistant director must have five years' experience, preferably in police or public administration. The director and an assistant director are entitled to annual salaries as provided by the legislature.

SECTION 5. Subchapter A, Chapter 411, Government Code, is amended by amending Section 411.006 and adding Section 411.0061 to read as follows:

Sec. 411.006. DUTIES OF DIRECTOR. (a) The director shall:

(1) be directly responsible to the commission for the conduct of the department's affairs;

(2) act as executive director of the department;

(3) act with the commission in an advisory capacity, without vote;

(4) adopt rules, subject to commission approval, considered necessary for the control of the department;

(5) issue commissions as law enforcement officers, under the commission's direction, to all members of the Texas Rangers and the Texas Highway Patrol and to other officers of the department;

(6) appoint, with the advice and consent of the commission, the head [~~chiefs~~] of a division or bureau [~~the bureaus~~] provided for by this chapter;

(7) [~~issue and sign requisitions as provided by law for the purchase of supplies for the office and officers of the department, suitable uniforms, arms, and equipment;~~

[~~(8)~~] quarterly, annually, and biennially submit to the commission detailed reports of the operation of the department, including statements of its expenditures; and

(8) [~~(9)~~] prepare, swear to, submit to the governor, and file in the department's records a quarterly statement containing an itemized list of all money received and its source and all money spent and the purposes for which it was spent.

(b) The director or the director's designee shall provide to members of the commission and to department employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including

information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 411.0061. COMMERCIAL CARRIER INSPECTIONS: IMPLEMENTATION SCHEDULE FOR NONCOMMISSIONED PERSONNEL. (a) The director shall develop a schedule to include the use of noncommissioned staff assigned to enforce commercial motor vehicle rules under Sections 644.103 and 644.104, Transportation Code, to supplement the current enforcement program by commissioned officers. The schedule shall be implemented over a five-year period beginning January 1, 2000.

(b) A report that provides details of the schedule and the status of schedule implementation shall be filed with the Legislative Budget Board with each legislative appropriations request of the department.

(c) Unless otherwise directed by the General Appropriations Act, the department may not increase the number of commissioned officers assigned to enforce commercial motor vehicle rules under Sections 644.103 and 644.104, Transportation Code, until the schedule developed under Subsection (a) has been fully implemented.

(d) The department may not reduce the number of commissioned officers to comply with this section, unless otherwise directed by the General Appropriations Act.

(e) This section expires January 1, 2005.

SECTION 6. Section 411.007, Government Code, is amended to read as follows:

Sec. 411.007. OFFICERS AND EMPLOYEES. (a) Subject to [~~the commission's approval and~~] the provisions of this chapter, the director may appoint, promote, reduce, suspend, or discharge any officer or employee of the department.

(b) Appointment or promotion of an officer or employee must be based on merit determined [~~by examination~~] under commission rules that take into consideration the applicant's age and[~~,~~] physical condition, if appropriate and to the extent allowed under federal law, and that take into consideration the applicant's experience[~~,~~] and education. For promotions of commissioned officers, other than those positions covered under Section 411.0071, the department, with the advice and consent of the commission, shall establish processes to be consistently applied and based on merit. Each person who has an application on file for a position in the department for which an applicant must take an examination shall be given reasonable written notice of the time and place of those examinations.

(c) An applicant for a position in the department must be a United States citizen. An applicant may not be questioned regarding the applicant's political affiliation or religious faith or beliefs. The department may not prohibit an officer or employee of the department, while off duty and out of uniform, from placing a bumper sticker endorsing political activities or a candidate for political office on a personal vehicle, placing a campaign sign in the person's private yard, making a political contribution, or wearing a badge endorsing political activities or a candidate. An officer commissioned by the department may not be suspended, terminated, or subjected to any form of discrimination by the department because of the refusal of the officer to take a polygraph examination.

(d) At least annually the heads [~~chiefs~~] of the divisions and bureaus, after due investigation, shall make a report to the director [~~commission~~] of the efficiency of each employee within the division or bureau. These reports shall be kept in the department's [~~commission's~~] permanent files and shall be given proper consideration in all matters of promotion and discharge.

(e) An officer or employee of the department may not be discharged without just cause. The director shall determine whether an officer or employee is to be discharged.

An officer or employee ordered discharged may appeal to the commission, and during the appeal the officer or employee shall be suspended without pay. Except as provided by Subsection (f), the [~~The~~] department may not discharge, suspend, or demote a commissioned officer except for the violation of a specific commission rule. If the department discharges, suspends, or demotes an officer, the department shall deliver to the officer a written statement giving the reasons for the action taken. The written statement must point out each commission rule alleged to have been violated by the officer and must describe the alleged acts of the officer that the department contends are in violation of the commission rules. [~~An officer commissioned by the department may not be suspended, terminated, or subjected to any form of discrimination by the department because of the refusal of the officer to take a polygraph examination.~~]

(f) [~~The commission shall establish grades and positions for the department. For each grade and position the commission shall designate the authority and responsibility within the limits of this chapter, set standards of qualifications, and fix prerequisites of training, education, and experience.~~] The commission shall establish [~~adopt~~] necessary policies and procedures [~~rules~~] for the appointment, promotion, reduction, suspension, and discharge of all employees [~~after hearing before the commission~~]. A discharged officer or employee is entitled, on application to the commission, to a public hearing before the commission, who shall affirm or set aside the discharge. The commission shall affirm or set aside a discharge on the basis of the evidence presented. If the commission affirms the discharge, the discharged officer may seek judicial review, not later than the 90th day after the date the commission affirms the discharge, in a district court under the substantial evidence standard of review, and the officer remains suspended without pay while the case is under judicial review. A noncommissioned employee [~~person~~] inducted into the service of the department is on probation for the first one year of service, and an officer is on probation from the date the person is inducted into the service of the department until the anniversary of the date the person is commissioned. At [~~at~~] any time during the probationary [~~that~~] period, a person may be discharged without the public hearing provided for by this subsection if the director, with the advice and consent of the commission, finds the person to be unsuitable for the work.

SECTION 7. Subchapter A, Chapter 411, Government Code, is amended by adding Sections 411.0071, 411.0072, 411.0073, 411.0098, 411.0099, and 411.0131 to read as follows:

Sec. 411.0071. DIRECT APPOINTMENT TO MANAGEMENT TEAM POSITIONS BY DIRECTOR. (a) The director may designate a head of a division or a position that involves working directly with the director as a management team position.

(b) The director may directly appoint a person to a position designated as a management team position under Subsection (a) under criteria determined by the director and approved by the commission. The director's appointment of a person to a management team position or transfer of a person from a management team position to another position for which the person is qualified, as determined by the director, is not subject to Section 411.007.

(c) A person appointed to a management team position under this section, on removal from that position, shall be returned to the position the person held immediately before appointment to the management team position or to a position of equivalent rank. If a person is removed from a management team position as a result of the filing of a formal charge of misconduct, this subsection applies only if the person is exonerated for the misconduct charged.

Sec. 411.0072. EMPLOYMENT-RELATED GRIEVANCES AND APPEALS OF DISCIPLINARY ACTIONS WITHIN THE DEPARTMENT. (a) In this section:

(1) "Disciplinary action" means discharge, suspension, or demotion.

(2) "Employment-related grievance" means an employment-related issue, other than a disciplinary action, in regard to which an employee wishes to express dissatisfaction, including promotions, leave requests, performance evaluations, transfers, benefits, working environment, shift or duty assignments, harassment, retaliation, and relationships with supervisors or other employees or any other issue the commission determines by rule.

(b) The commission shall establish procedures and practices governing the appeal of a disciplinary action within the department.

(c) The commission shall establish procedures and practices through which the department will address an employment-related grievance that include:

(1) a form on which an employee may state an employment-related grievance and request a specific corrective action;

(2) time limits for submitting a grievance and for management to respond to a grievance;

(3) a multilevel process in which an employee's grievance is submitted to the lowest appropriate level of management, with each subsequent appeal submitted to a higher level in the chain of command;

(4) an assurance that confidentiality of all parties involved will be maintained, except to the extent that information that is subject to required public disclosure under the public information law, Chapter 552, is released in response to an open records request, and that retaliation against an employee who files a grievance is prohibited; and

(5) a program to advertise and explain the grievance procedure to all employees.

(d) The department shall submit annually to the commission, and as part of its biennial report to the legislature required under Section 411.004, a report on the department's use of the employment-related grievance process under Subsection (c). The report must include:

(1) the number of grievances filed;

(2) a brief description of the subject of each grievance filed; and

(3) the final disposition of each grievance.

Sec. 411.0073. MEDIATION OF PERSONNEL DISPUTES. (a) The commission shall establish procedures for an employee to resolve an employment-related grievance covered by Section 411.0072 through mediation if the employee chooses. The procedures must include mediation procedures and establish the circumstances under which mediation is appropriate for an employment-related grievance.

(b) Except for Section 2008.054, Chapter 2008, as added by Chapter 934, Acts of the 75th Legislature, Regular Session, 1997, does not apply to the mediation. The mediator must be trained in mediation techniques.

Sec. 411.0098. COORDINATION WITH DEPARTMENT OF TRANSPORTATION. (a) The department and the Texas Department of Transportation shall establish procedures to ensure effective coordination of the development of transportation infrastructure projects that affect both agencies.

(b) Procedures established under this section shall:

(1) allow each agency to provide comments and advice to the other agency on an ongoing basis regarding statewide transportation planning efforts that affect traffic law enforcement;

(2) define the role of each agency in transportation infrastructure efforts; and

(3) require the department and the Texas Department of Transportation to develop a plan for applying for and using federal funds to address infrastructure needs that affect enforcement efforts.

(c) The department and the Texas Department of Transportation shall:

(1) update and revise the procedures established under this section as necessary; and

(2) file not later than January 15 of each odd-numbered year with the presiding officer of each house of the legislature a report that describes the procedures established under this section and their implementation.

Sec. 411.0099. NEEDS ASSESSMENT FOR ENFORCEMENT OF COMMERCIAL MOTOR VEHICLE RULES. (a) The department shall conduct a long-term needs assessment for the enforcement of commercial motor vehicle rules that considers at a minimum:

(1) the inventory of current facilities and equipment used for enforcement, including types of scales, structures, space, and other equipment;

(2) enforcement activity, including trend information, at fixed-site facilities;

(3) staffing levels and operating hours for each facility; and

(4) needed infrastructure improvements and the associated costs and projected increase in activity that would result from the improvements.

(b) The department shall submit a biennial report to the legislative committees with primary jurisdiction over state budgetary matters and the Texas Transportation Commission that reflects the results of the needs assessment conducted under Subsection (a). The report shall be submitted to the legislature in conjunction with the department's legislative appropriations request.

Sec. 411.0131. USE OF SEIZED AND FORFEITED ASSETS. (a) The commission by rule shall establish a process under which the commission approves all of the department's dispositions of assets seized or forfeited under state or federal law and received by or appropriated to the department. The commission shall adopt rules under this section in accordance with Chapter 2001. Before approving a disposition, the commission shall consider how the disposition supports priorities established in the department's strategic plan and whether the disposition complies with applicable federal guidelines.

(b) The department shall file annually with the governor and the presiding officer of each house of the legislature a report on seized and forfeited assets. The report must include:

(1) a summary of receipts, dispositions, and fund balances for the fiscal year derived from both federal and state sources;

(2) regarding receipts, the court in which each case involving seized or forfeited assets was adjudicated, the nature and value of the assets, and the specific intended use of the assets;

(3) regarding dispositions, the departmental control number and category, the division making the request, the specific item and amount requested, the amount the commission approved, and the actual amount expended per item; and

(4) regarding planned dispositions, a description of the broad categories of anticipated dispositions and how they relate to the department's strategic plan.

(c) The department shall, within 30 days after the end of each quarter, report and justify any dispositions of seized or forfeited assets during the quarter that:

(1) differ from the planned dispositions reported under Subsection (b); and

(2) were used for a purpose not considered a priority in the department's strategic plan or not required by law or applicable federal guidelines.

SECTION 8. Section 411.0195, Government Code, is amended by amending Subsections (c) and (d) and adding Subsection (e) to read as follows:

(c) The department shall maintain a file on each written complaint filed with the department. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the department;

(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 [~~keep an information file about each complaint filed with the department that the department has authority to resolve~~].

(d) The department shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the department's policies and procedures relating to complaint investigation and resolution.

(e) The department, 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 unless the notice would jeopardize an undercover investigation. [~~If a written complaint is filed with the department that the department has authority to resolve, the department, at final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.~~]

SECTION 9. Section 411.023, Government Code, is amended by adding Subsection (f) to read as follows:

(f) The commission shall authorize a badge for persons appointed as special rangers under this section that is distinct in appearance from the badge authorized for special Texas Rangers under Section 411.024 and from any badge issued to a Texas Ranger.

SECTION 10. Subchapter B, Chapter 411, Government Code, is amended by adding Section 411.024 to read as follows:

Sec. 411.024. SPECIAL TEXAS RANGERS. (a) The commission may appoint as a special Texas Ranger an honorably retired or retiring commissioned officer of the department whose position immediately preceding retirement is an officer of the Texas Rangers.

(b) A special Texas Ranger is subject to the orders of the commission and the governor for special duty to the same extent as other law enforcement officers provided for by this chapter, except that a special Texas Ranger may not enforce a law except one designed to protect life and property and may not enforce a law regulating the use of a state highway by a motor vehicle. A special Texas Ranger is not connected with a ranger company or uniformed unit of the department.

(c) Before issuance of a commission to a special Texas Ranger the person shall enter into a good and sufficient bond executed by a surety company authorized to do business in the state in the amount of $2,500, approved by the director, and indemnifying all persons against damages resulting from an unlawful act of the special Texas Ranger.

(d) A special Texas Ranger is not entitled to compensation from the state for service as a special Texas Ranger.

(e) A special Texas Ranger commission expires January 1 of the first odd-numbered year after appointment. The commission may revoke the commission of a special Texas Ranger who commits a violation of a rule of the department for which an active officer of the Texas Rangers would be discharged.

(f) The commission shall authorize a badge for persons appointed as special Texas Rangers under this section that is distinct in appearance from the badge authorized for special rangers under Section 411.023.

SECTION 11. Subsection (a), Section 411.046, Government Code, is amended to read as follows:

(a) The bureau of identification and records shall establish and maintain a central repository for the collection and analysis of information relating to crimes that are motivated by prejudice, hatred, or advocacy of violence, including, but not limited to, incidents for which statistics are or were kept under Public Law No. 101-275, as that law existed on July 3, 1996 [~~September 1, 1991~~]. On establishing the repository, the department shall develop a procedure to monitor, record, classify, and analyze information relating to incidents directed against persons and property that are apparently motivated by the factors listed in this subsection.

SECTION 12. Subsection (a), Section 411.047, Government Code, is amended to read as follows:

(a) The department shall maintain statistics related to responses by law enforcement agencies to incidents in which a person licensed to carry a handgun under Subchapter H is convicted of [~~arrested for~~] an offense under Section 46.035, Penal Code[~~, or discharges a handgun~~].

SECTION 13. Subchapter D, Chapter 411, Government Code, is amended by adding Section 411.050 to read as follows:

Sec. 411.050. CRIME STATISTIC MAPPING. The department, in conjunction with Southwest Texas State University, may annually produce maps of the state that include information regarding crime statistics correlated with the various regions of the state.

SECTION 14. Section 411.178, Government Code, is amended to read as follows:

Sec. 411.178. NOTICE TO LOCAL LAW ENFORCEMENT. [~~If the department issues a license, the department shall notify the sheriff of the county in which the license holder resides that a license has been issued to the license holder.~~] On request of a local law enforcement agency, the department shall notify the agency of the licenses that have been issued to license holders who reside in the county in which the agency is located.

SECTION 15. Subsection (f), Section 411.181, Government Code, is amended to read as follows:

(f) [~~The department shall notify the sheriff of the county in which a license holder resides of a change made under Subsection (a) by the license holder.~~] On request of a

local law enforcement agency, the department shall notify the agency of changes made under Subsection (a) by license holders who reside in the county in which the agency is located.

SECTION 16. Chapter 411, Government Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. INTERNAL OVERSIGHT

Sec. 411.241. OFFICE OF AUDIT AND REVIEW. The commission shall establish the office of audit and review. The office shall coordinate activities designed to promote effectiveness in departmental operations and to keep the commission and the legislature fully informed about deficiencies within the department. The office shall:

(1) inspect and audit departmental programs and operations for efficiency, uniformity, and compliance with established procedures and develop recommendations for improvement;

(2) coordinate and be responsible for promoting accountability, integrity, and efficiency in the department; and

(3) provide the commission with information relevant to its oversight of the department.

Sec. 411.242. DIRECTOR OF AUDIT AND REVIEW. (a) The commission shall appoint the director of the office of audit and review. The director of audit and review serves until removed by the commission.

(b) The director of audit and review must satisfy the requirements to be the agency's internal auditor under Section 2102.006(b) and is considered to be the agency's internal auditor for purposes of Chapter 2102.

(c) The department shall provide the director of audit and review with access to any records, data, or other information necessary to fulfill the purposes of this section and Section 411.243.

(d) The director of audit and review shall, with the advice and consent of the commission, determine which audits and inspections to perform and may publish the findings and recommendations of the office of audit and review.

(e) The director of audit and review shall:

(1) report to the commission regarding audits and inspections planned and the status and findings of those audits and inspections; and

(2) report to the director for administrative purposes and keep the director informed of the office's findings.

Sec. 411.243. POWERS AND DUTIES. (a) The office of audit and review shall:

(1) independently and objectively inspect all divisions of the department to:

(A) ensure that operations are conducted efficiently, uniformly, and in compliance with established procedures; and

(B) make recommendations for improvements in operational performance;

(2) independently and objectively audit all divisions of the department to:

(A) promote economy, effectiveness, and efficiency within the department;

(B) prevent and detect fraud, waste, and abuse in department programs and operations; and

(C) make recommendations about the adequacy and effectiveness of the department's system of internal control policies and procedures;

(3) advise in the development and evaluation of the department's performance measures;

(4) review actions taken by the department to improve program performance and make recommendations for improvement;

(5) review and make recommendations to the commission and the legislature regarding rules, laws, and guidelines relating to department programs and operations;

(6) keep the commission, director, and legislature fully informed of problems in department programs and operations; and

(7) ensure effective coordination and cooperation among the state auditor's office, legislative oversight committees, and other governmental bodies while attempting to avoid duplication.

(b) Chapter 2102 applies to the office of audit and review.

Sec. 411.244. INTERNAL AFFAIRS. (a) The director shall establish the office of internal affairs.

(b) The office of internal affairs has original departmental jurisdiction over all investigations occurring on department property or involving department employees. The office shall coordinate, but need not conduct, all investigations under this section.

(c) An investigation under this section may be initiated only by the director or the commission.

(d) The director shall appoint the head of the office of internal affairs. The head of the office of internal affairs serves until removed by the director.

(e) The head of the office of internal affairs shall report directly to the director regarding performance of and activities related to investigations, report to the director for administrative purposes, and provide the director with information regarding investigations as appropriate.

(f) The head of the office of internal affairs shall present at each regularly scheduled commission meeting and at other appropriate times a summary of information relating to investigations conducted under this section that includes analysis of the number, type, and outcome of investigations, trends in the investigations, and recommendations to avoid future complaints.

SECTION 17. Subsection (a), Section 502.409, Transportation Code, is amended to read as follows:

(a) A person commits an offense if the person attaches to or displays on a motor vehicle a number plate or registration insignia that:

(1) is assigned to a different motor vehicle;

(2) is assigned to the vehicle under any other motor vehicle law other than by the department;

(3) is assigned for a registration period other than the registration period in effect;

(4) is fictitious; [~~or~~]

(5) has letters, numbers, or other identification marks that because of blurring matter are not plainly visible at all times during daylight;

(6) is a sticker, decal, or other insignia that is not authorized by law and that interferes with the readability of the letters or numbers on the plate; or

(7) has a coating, covering, or protective material that distorts angular visibility or detectability.

SECTION 18. Section 521.044, Transportation Code, is amended by adding Subsection (f) to read as follows:

(f) This section does not authorize the department to require an applicant for a driver's license to provide the applicant's social security number unless the provision of the social security number is required under federal law.

SECTION 19. Subchapter E, Chapter 521, Transportation Code, is amended by adding Section 521.103 to read as follows:

Sec. 521.103. RENEWAL BY MAIL OR ELECTRONIC MEANS. The department by rule may provide that the holder of a personal identification certificate may renew the certificate by mail, by telephone, over the Internet, or by other electronic means. A rule adopted under this section may prescribe eligibility standards for renewal under this section.

SECTION 20. Section 521.125, Transportation Code, is amended to read as follows:

Sec. 521.125. MEDICAL AND EMERGENCY INFORMATION ON LICENSE. On the reverse side of a driver's license, the department shall:

(1) print:

(A) [~~(1)~~] "Allergic Reaction to Drugs: _____"; [~~and~~]

(B) [~~(2)~~] "Directive to physician has been filed at tel. #"; and

(C) "Emergency contact tel. #";

(2) include to the right of the statements under Subdivisions (1)(B) and (C) a surface on which [~~followed by a line that~~] the license holder may write [~~use to indicate~~] the appropriate telephone number; and

(3) include to the left of each of the statements under Subdivisions (1)(B) and (C) a box that the license holder may use to indicate for what purpose the telephone number applies.

SECTION 21. Subsection (a), Section 521.141, Transportation Code, is amended to read as follows:

(a) An applicant for an original or renewal of a driver's license must apply in a manner prescribed [~~on a form provided~~] by the department.

SECTION 22. Section 521.142, Transportation Code, is amended by adding Subsection (g) to read as follows:

(g) The department may not require an applicant to provide the applicant's social security number unless the provision of the social security number is required under federal law.

SECTION 23. Subsection (a), Section 521.143, Transportation Code, is amended to read as follows:

(a) An application for an original [~~or renewal of a~~] driver's license must be accompanied by evidence of financial responsibility or a statement that the applicant does not own a motor vehicle for which evidence of financial responsibility is required under Chapter 601. The department may require an application for a renewal of a driver's license to be accompanied by evidence of financial responsibility or a statement that the applicant does not own a motor vehicle for which evidence of financial responsibility is required under Chapter 601.

SECTION 24. Section 521.274, Transportation Code, is amended to read as follows:

Sec. 521.274. RENEWAL BY MAIL OR ELECTRONIC MEANS. [~~(a)~~] The department by rule may provide that the holder of a driver's license may renew the license by mail, by telephone, over the Internet, or by other electronic means.

[~~(b)~~] A rule adopted under this section [~~subsection~~] may prescribe eligibility standards for renewal under this section [~~not permit renewal by mail of:~~

[~~(1) a provisional license;~~

[~~(2) an occupational license; or~~

[~~(3) a driver's license if the license holder's driving record as maintained by the department shows that the holder, within the four years preceding the date of the renewal application, has been convicted of:~~

[~~(A) a moving violation, as defined by department rule, in this state; or~~

[~~(B) an offense described by Subchapter O~~].

SECTION 25. The subchapter heading to Subchapter M, Chapter 521, Transportation Code, is amended to read as follows:

SUBCHAPTER M. LICENSE EXPIRATION, [~~AND~~] RENEWAL, AND NUMBER CHANGE

SECTION 26. Subchapter M, Chapter 521, Transportation Code, is amended by adding Section 521.275 to read as follows:

Sec. 521.275. CHANGE OF DRIVER'S LICENSE OR PERSONAL IDENTIFICATION CERTIFICATE NUMBER. (a) The department shall issue to a person a new driver's license number or personal identification certificate number on the person's showing a court order stating that the person has been the victim of domestic violence.

(b) The department may require each applicant to furnish the information required by Section 521.142. If the applicant's name has changed, the department may require evidence identifying the applicant by both the former and new name.

(c) Except as provided by Sections 521.049(c), 730.005, and 730.006, the department may not disclose:

(1) the changed license or certificate number; or

(2) the person's name or any former name.

SECTION 27. Subsection (d), Section 521.306, Transportation Code, is amended to read as follows:

(d) The department may not reinstate a license suspended or revoked under this subchapter unless the person whose license was suspended or revoked applies to the department for reinstatement of the license and pays a $100 [~~$50~~] reinstatement fee to the department.

SECTION 28. Subchapter R, Chapter 521, Transportation Code, is amended by adding Section 521.427 to read as follows:

Sec. 521.427. METHOD OF PAYMENT OF FEES. (a) The department may adopt rules regarding the method of payment of a fee for a license, personal identification card, or license record issued under this chapter.

(b) The rules may authorize payment, under circumstances prescribed by the department:

(1) in person, by mail, by telephone, or over the Internet;

(2) by means of electronic funds transfer; or

(3) by means of a valid credit card issued by a financial institution chartered by a state or the federal government or by a nationally recognized credit organization approved by the department.

(c) The rules may require the payment of a discount or service charge for a credit card payment in addition to the fee.

SECTION 29. Subsection (a), Section 548.051, Transportation Code, is amended to read as follows:

(a) A motor vehicle, trailer, semitrailer, pole trailer, or mobile home, registered in this state, must have the following items inspected at an inspection station or by an inspector:

(1) tires;

(2) wheel assembly;

(3) safety guards or flaps, if required by Section 547.606;

(4) brake system, including power brake unit;

(5) steering system, including power steering;

(6) lighting equipment;

(7) horns and warning devices;

(8) mirrors;

(9) windshield wipers;

(10) sunscreening devices, unless the vehicle is exempt from sunscreen device restrictions under Section 547.613;

(11) front seat belts in vehicles on which seat belt anchorages were part of the manufacturer's original equipment;

(12) tax decal, if required by Section 548.104(d)(1);

(13) exhaust system; [~~and~~]

(14) exhaust emission system;

(15) fuel tank cap, using pressurized testing equipment approved by department rule; and

(16) emissions control equipment as designated by department rule.

SECTION 30. Section 548.306, Transportation Code, is amended by adding Subsections (k), (l), (m), and (n) to read as follows:

(k) A hearing for a citation issued under this section shall be heard by a justice of the peace of any precinct in the county in which the vehicle is registered.

(l) Enforcement of the remote sensing component of the vehicle emissions inspection and maintenance program may not involve any method of screening in which the registered owner of a vehicle found to have allowable emissions by remote sensing technology is charged a fee.

(m) The department by rule may require that a vehicle determined by on-road testing to have excessive emissions be assessed an on-road emissions testing fee not to exceed the emissions testing fee charged by a certified emissions testing facility.

(n) The department by rule may establish procedures for reimbursing a fee for a verification test required by Subsection (c) if the owner demonstrates to the department's satisfaction that:

(1) the vehicle passed the verification emissions test not later than the 30th day after the date the vehicle owner received notice that the vehicle was detected as having excessive emissions; and

(2) the vehicle was not repaired between the date of detection and the date of the verification emissions test.

SECTION 31. Subsections (a) and (c), Section 548.405, Transportation Code, are amended to read as follows:

(a) The department may deny a person's application for a certificate, revoke or suspend the certificate of a person, inspection station, or inspector, place on probation a person who holds a suspended certificate, or reprimand a person who holds a certificate if:

(1) the station or inspector conducts an inspection, fails to conduct an inspection, or issues a certificate:

(A) in violation of this chapter or a rule adopted under this chapter; or

(B) without complying with the requirements of this chapter or a rule adopted under this chapter;

(2) the person, station, or inspector commits an offense under this chapter or violates this chapter or a rule adopted under this chapter;

(3) the applicant or certificate holder does not meet the standards for certification under this chapter or a rule adopted under this chapter;

(4) the station or inspector does not maintain the qualifications for certification or does not comply with a certification requirement under Subchapter G;

(5) the certificate holder or the certificate holder's agent, employee, or representative commits an act or omission that would cause denial, revocation, or suspension of a certificate to an individual applicant or certificate holder;

(6) the station or inspector does not pay a fee required by Subchapter H; or

(7) the inspector or owner of an inspection station is convicted of a:

(A) felony or Class A or Class B misdemeanor;

(B) similar crime under the jurisdiction of another state or the federal government that is punishable to the same extent as a felony or a Class A or Class B misdemeanor in this state; or

(C) crime under the jurisdiction of another state or the federal government that would be a felony or a Class A or Class B misdemeanor if the crime were committed in this state.

(c) If the department suspends a certificate because of a violation of Subchapter F, the suspension must be for a period of not less than six months. The suspension may not be probated or deferred.

SECTION 32. Subsection (l), Section 548.407, Transportation Code, is amended to read as follows:

(l) If an administrative law judge of the State Office of Administrative Hearings conducts a hearing under this section and the proposal for decision supports the position of the department, the proposal for decision may recommend a denial of an application or a revocation or suspension of a certificate only. The proposal may not recommend a reprimand or a probated or otherwise deferred disposition of the denial, revocation, or suspension. If the [~~in conducting a hearing under this section an~~] administrative law judge [~~of the State Office of Administrative Hearings~~] makes a proposal for a decision to deny an application or to suspend or revoke a certificate, the administrative law judge shall include in the proposal a finding of the costs, fees, expenses, and reasonable and necessary attorney's fees the state incurred in bringing the proceeding. The director may adopt the finding for costs, fees, and expenses and make the finding a part of the final order entered in the proceeding. Proceeds collected from a finding made under this subsection shall be paid to the department [~~deposited in a special account in the general revenue fund that may be appropriated only to the attorney general~~].

SECTION 33. Section 548.408, Transportation Code, is amended by amending Subsections (a) and (b) and adding Subsection (f) to read as follows:

(a) A person dissatisfied with the action of the director may appeal the action[~~, without filing a motion for rehearing,~~] by filing a petition in district court in the county where the person resides or in Travis County. The petition must be filed not later than the 30th day after the date the action is taken.

(b) The district or county attorney or the attorney general shall represent the director in the appeal, except that an attorney who is a full-time employee of the

department may represent the director in the appeal with the approval of the attorney general.

(f) A stay under this section may not be effective for more than 90 days after the date the petition for appeal is filed. On the expiration of the stay, the director's action shall be reinstated or imposed. The department or court may not extend the stay or grant an additional stay.

SECTION 34. Subsection (a), Section 548.501, Transportation Code, is amended to read as follows:

(a) Except as provided by Sections 548.503 and 548.504, the fee for inspection of a motor vehicle other than a moped is $12.50 [~~$10.50~~]. The fee for inspection of a moped is $5.75. The fee for a verification form issued as required by Section 548.256 is $1.

SECTION 35. Subsection (a), Section 548.503, Transportation Code, is amended to read as follows:

(a) The fee for inspection of a passenger car or light truck under Section 548.102 shall be set by the department by rule on or before September 1 of each year [~~is $19.75~~]. A fee set by the department under this subsection must be based on the costs of producing certificates, providing inspections, and administering the program, but may not be less than $21.75.

SECTION 36. Subsection (a), Section 548.601, Transportation Code, is amended to read as follows:

(a) A person, including an inspector or an inspection station, commits an offense if the person:

(1) issues an inspection certificate with knowledge that the issuance is in violation of this chapter or rules adopted under this chapter;

(2) falsely or fraudulently represents to the owner or operator of a vehicle that equipment inspected or required to be inspected must be repaired, adjusted, or replaced for the vehicle to pass an inspection;

(3) misrepresents:

(A) material information in an application in violation of Section 548.402 or 548.403; or

(B) information filed with the department under this chapter or as required by department rule;

(4) issues an inspection certificate:

(A) without authorization to issue the certificate; or

(B) without inspecting the vehicle;

(5) issues an inspection certificate for a vehicle with knowledge that the vehicle has not been repaired, adjusted, or corrected after an inspection has shown a repair, adjustment, or correction to be necessary;

(6) knowingly issues an inspection certificate:

(A) for a vehicle without conducting an inspection of each item required to be inspected; or

(B) for a vehicle that is missing an item required to be inspected or that has an item required to be inspected that is not in compliance with state law or department rules;

(7) refuses to allow a vehicle's owner to have a qualified person of the owner's choice make a required repair, adjustment, or correction; [~~or~~]

(8) charges for an inspection an amount greater than the authorized fee; or

(9) performs an act prohibited by or fails to perform an act required by this chapter or a rule adopted under this chapter.

SECTION 37. Subsection (a), Section 548.602, Transportation Code, is amended to read as follows:

(a) After the fifth day after the date of expiration of the period designated for inspection, a person may not operate:

(1) a motor vehicle registered in this state unless a current and appropriate inspection certificate is displayed on the vehicle; or

(2) a commercial motor vehicle registered in this state unless it is equipped as required by federal motor carrier safety regulations and displays an inspection certificate issued under the program established under Section 548.201.

SECTION 38. Subsection (a), Section 601.376, Transportation Code, is amended to read as follows:

(a) A driver's license, vehicle registration, or nonresident's operating privilege that has been suspended under this chapter may not be reinstated and a new license or registration may not be issued to the holder of the suspended license, registration, or privilege until the person:

(1) pays to the department a fee of $100 [~~$50~~]; and

(2) complies with the other requirements of this chapter.

SECTION 39. Subsection (b), Section 644.101, Transportation Code, as amended by S.B. No. 1368, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

(b) A police officer of any of the following municipalities is eligible to apply for certification under this section:

(1) a municipality with a population of 100,000 or more;

(2) a municipality with a population of 25,000 or more any part of which is located in a county with a population of 2.4 million or more; [~~or~~]

(3) a municipality with a population of less than 25,000:

(A) any part of which is located in a county with a population of 2.4 million; and

(B) that contains or is adjacent to an international port; or

(4) a municipality any part of which is located in a county bordering the United Mexican States.

SECTION 40. Section 644.103, Transportation Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) A noncommissioned employee of the department who is certified for the purpose by the director and who is supervised by an officer of the department may, at a fixed-site facility, enter a motor vehicle that is subject to this chapter. If the employee's inspection shows that an enforcement action, such as the issuance of a citation, is warranted, the supervising officer must take the action.

(e) The department's training and other requirements for certification of a noncommissioned employee of the department under this section must be the same as the training and requirements, other than the training and requirements for becoming and remaining a peace officer, for officers who enforce this chapter.

SECTION 41. Section 644.104, Transportation Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) The department may use an officer to conduct an inspection under this section if the inspection involves a situation that the department determines to reasonably require the use or presence of an officer to accomplish the inspection.

(d) The department's training and other requirements for certification of a noncommissioned employee of the department under this section must be the same as the training and requirements, other than the training and requirements for becoming and remaining a peace officer, for officers who enforce this chapter.

SECTION 42. Section 382.0374, Health and Safety Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) Subject to Subsection (d), the commission and the Department of Public Safety of the State of Texas by rule may allow alternative vehicle emissions testing, including onboard diagnostic testing, if:

(1) the technology provides accurate and reliable results;

(2) the technology is widely and readily available to persons interested in performing alternative vehicle emissions testing; and

(3) the use of alternative testing is not likely to substantially affect federal approval of the state's air quality state implementation plan.

(d) A rule adopted under Subsection (c) may not be more restrictive than federal regulations governing vehicle emissions testing.

SECTION 43. Subsections (a) and (b), Article 60.061, Code of Criminal Procedure, are amended to read as follows:

(a) The Texas State Board of Medical Examiners, the Texas State Board of Podiatric Medical Examiners, the State Board of Dental Examiners, the Texas State Board of Pharmacy, and the State Board of Veterinary Medical Examiners shall provide to the Department of Public Safety through electronic means, magnetic tape, or disk, as specified by the department, a list including the name, date of birth, and any other personal descriptive information required by the department for each person licensed by the respective agency. Each agency shall update this information and submit to the Department of Public Safety the updated information quarterly [~~monthly~~].

(b) The Department of Public Safety shall perform at least quarterly [~~monthly~~] a computer match of the licensing list against the convictions maintained in the computerized criminal history system. The Department of Public Safety shall report to the appropriate licensing agency for verification and administrative action, as considered appropriate by the licensing agency, the name of any person found to have a record of conviction, except a defendant whose prosecution is deferred during a period of community supervision without an adjudication or plea of guilt. The Department of Public Safety may charge the licensing agency a fee not to exceed the actual direct cost incurred by the department in performing a computer match and reporting to the agency.

SECTION 44. (a) In this section, "department" means the Department of Public Safety of the State of Texas.

(b) The Public Safety Commission shall adopt each rule and establish all procedures necessary to implement the changes in law made by this Act not later than January 1, 2000.

(c) Notwithstanding Section 521.125, Transportation Code, as amended by this Act, the department may use any materials used for driver's licenses that the department has on the effective date of this Act regardless of whether the materials comply with that section.

(d) Section 411.0031, Government Code, as added by this Act, does not apply to a member of the Public Safety Commission appointed before the effective date of this Act during the term the member is serving on that effective date.

(e) The change in law made by Subsection (f), Section 411.007, Government Code, as amended by this Act, relating to the probationary period of certain employees of the department, applies only to the probationary period of a person inducted into the service of the department on or after the effective date of this Act. The probationary period of a person inducted into the service of the department before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(f) The change in law made by Subsection (f), Section 411.007, Government Code, as amended by this Act, relating to judicial review of the discharge of an officer of the department, applies only to a discharge that is affirmed by the Public Safety Commission on or after the effective date of this Act. A discharge that is affirmed by the commission before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(g) The changes in law made by Section 411.0071, Government Code, as added by this Act, apply only to an appointment or promotion made on or after the effective date of this Act. A person who, immediately before the effective date of this Act, serves in a position that is designated as a management team position by the director of the department on or after that date continues to possess, after the effective date of this Act, all rights related to holding that position that the person possessed immediately before the effective date of this Act.

(h) The changes in law made by this Act do not affect a commission issued under Section 411.023, Government Code, before the effective date of this Act.

(i) Until the department sets the fee for an initial two-year inspection of a passenger car or light truck under Subsection (a), Section 548.503, Transportation Code, as amended by this Act, the fee is $19.75 before January 1, 2000, and $21.75 on or after January 1, 2000. The department by rule may set the fee at an amount exceeding $19.75 and charge the greater amount before January 1, 2000.

SECTION 45. (a) The change in law made by this Act to Subsection (a), Section 502.409, Section 548.306, and Subsection (a), Section 548.601, Transportation Code, applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and that law is continued in effect for that purpose.

SECTION 46. The change in law made by this Act to Subsection (l), Section 548.407, Transportation Code, relating to payment of proceeds collected from a finding made under that subsection, applies only to proceeds collected from a finding that is adopted by the director of the Department of Public Safety of the State of Texas on or after the effective date of this Act. Payment of proceeds collected from a finding that is adopted by the director before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 47. This Act takes effect September 1, 1999.

SECTION 48. 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 558

Senator Lucio submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 558** 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.

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| LUCIO | GARCIA |
| NIXON | CHAVEZ |
| BERNSEN | TALTON |
| GALLEGOS | NAISHTAT |
| CARONA | CHRISTIAN |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to training requirements for certain child-care providers.

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

SECTION 1. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.0421 to read as follows:

Sec. 42.0421. MINIMUM TRAINING STANDARDS. (a) The minimum training standards prescribed by the department under Section 42.042(p) for an employee of a day-care center or group day-care home must include:

(1) eight hours of initial training for an employee of a day-care center who has no previous training or employment experience in a regulated child-care facility, to be completed before the employee is given responsibility for a group of children;

(2) 15 hours of annual training for each employee of a day-care center or group day-care home, excluding the director; and

(3) 20 hours of annual training for each director of a day-care center or group day-care home.

(b) The minimum training standards prescribed by the department under Section 42.042(p) must require an employee of a licensed day-care center or group day-care home who provides care for children younger than 24 months of age to receive special training regarding the care of those children. The special training must be included as a component of the initial training required by Subsection (a)(1) and as a one-hour component of the annual training required by Subsections (a)(2) and (a)(3). The special training must include information on:

(1) recognizing and preventing shaken baby syndrome;

(2) preventing sudden infant death syndrome; and

(3) understanding early childhood brain development.

(c) The department by rule shall require an operator of a registered family home who provides care for a child younger than 24 months of age to complete one hour of annual training on:

(1) recognizing and preventing shaken baby syndrome;

(2) preventing sudden infant death syndrome; and

(3) understanding early childhood brain development.

(d) Section 42.042(m) does not apply to the minimum training standards required by this section.

SECTION 2. This Act takes effect January 1, 2000.

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 SENATE BILL 996**

Senator Lindsay submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 996** 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.

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| LINDSAY | COLEMAN |
| WENTWORTH | NAISHTAT |
| CARONA | NORIEGA |
| MONCRIEF | TRUITT |
| ZAFFIRINI | |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to burial expenses for children in foster care.

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

SECTION 1. Section 264.012, Family Code, is amended to read as follows:

Sec. 264.012. BURIAL [~~FUNERAL~~] EXPENSES FOR CHILD IN FOSTER CARE. (a) The department shall request that the parents pay reasonable and necessary burial expenses for a child for whom the department has been appointed managing

conservator and who dies in foster care, including a request that if the parents have an insurance policy or a bank account for the child, that the parents spend the proceeds from the policy or money in the account on the burial expenses. If the parents cannot pay all or part of the burial expenses, the department shall [~~may~~] spend funds appropriated for the child protective services program to pay reasonable and necessary burial [~~funeral~~] expenses for the [~~a~~] child [~~for whom the department has been appointed managing conservator and who dies in foster care~~].

(b) The department may accept donations, gifts, or in-kind contributions to cover the costs of any burial expenses for children for whom the department has been appointed managing conservator.

(c) This section does not apply to a foster parent.

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 SENATE BILL 709**

Senator Sibley submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 709** 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.

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| SIBLEY | KEFFER |
| CAIN | F. BROWN |
| ELLIS | HARDCASTLE |
| LINDSAY | MOWERY |
| MADLA | WALKER |
| On the part of the Senate | On the part of the House |

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 percentage of a lot that may be occupied or developed;

(2) population density;

(3) the size of buildings;

(4) the location, design, construction, extension, and size of streets and roads;

(5) 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;

(6) the location, design, construction, extension, size, and installation of drainage facilities and other required public facilities;

(7) the location, design, and construction of parks, playgrounds, and recreational areas; and

(8) 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 Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2821**

Senator Cain submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 2821** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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|---|---|
| CAIN | MCCALL |
| WEST | OLIVEIRA |
| WENTWORTH | KEFFER |
| OGDEN | Y. DAVIS |
| SIBLEY | |
| 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 694**

Senator Cain submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 694** 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.

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| CAIN | JIM SOLIS |
| HARRIS | CAPELO |
| NIXON | T. KING |
| MONCRIEF | THOMPSON |
| WENTWORTH | URESTI |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to the written notice of the appraised value of property for ad valorem tax purposes delivered by a chief appraiser to the property owner.

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

SECTION 1. Section 25.19, Tax Code, is amended to read as follows:

Sec. 25.19. NOTICE OF APPRAISED VALUE. (a) By May 15 or as soon thereafter as practicable, the chief appraiser shall deliver a clear and understandable written notice to a property owner of the appraised value of the property owner's [~~his~~] property if:

(1) the appraised value of the property is greater than it was in the preceding year;

(2) the appraised value of the property is greater than the value rendered by the property owner; or

(3) the property was not on the appraisal roll in the preceding year.

(b) The chief appraiser shall separate real from personal property and include in the notice for each:

(1) a list of the taxing units in which the property is taxable;

(2) the appraised value of the property in the preceding year;

(3) the taxable value of the property in the preceding year for each taxing unit taxing the property;

(4) the appraised value of the property for the current year and the kind and amount of each partial exemption, if any, approved for the current year;

(5) if the appraised value is greater than it was in the preceding year, [~~:~~

[~~(A) the effective tax rate that would be announced pursuant to Chapter 26 if the total values being submitted to the appraisal review board were to be approved by the board with an explanation that that rate would raise the same amount of revenue from property taxed in the preceding year as the unit raised for those purposes in the preceding year;~~

[~~(B)~~] the amount of tax that would be imposed on the property on the basis of the tax rate for the preceding year [~~described by Paragraph (A); and~~

[~~(C) a statement that the governing body of the unit may not adopt a rate that will increase tax revenues above tax revenues for the preceding year without publishing notice in a newspaper that it is considering a tax increase and holding a hearing for taxpayers to discuss the tax increase~~];

(6) in italic typeface, the following statement: "The Texas Legislature does not set the amount of your local taxes. Your property tax burden is decided by your locally elected officials, and all inquiries concerning your taxes should be directed to those officials";

(7) a detailed explanation of the time and procedure for protesting the value;

(8) the date and place the appraisal review board will begin hearing protests; and

(9) a brief explanation that[~~:~~

[~~(A)~~] the governing body of each taxing unit decides whether or not taxes on the property will increase and the appraisal district only determines the value of the property[~~; and~~

[~~(B) a taxpayer who objects to increasing taxes and government expenditures should complain to the governing bodies of the taxing units and only complaints about value should be presented to the appraisal office and the appraisal review board~~].

(c) [~~In making the preliminary calculation required by Subsection (b)(5)(A) of this section of the effective tax rate that will not increase taxes, taxes imposed by a unit in the preceding year on property not yet appraised and submitted to the appraisal review board for the current year shall be excluded.~~

[~~(d)~~] In the case of the residence homestead of a person 65 years of age or older that is subject to the limitation on a tax increase over the preceding year for school tax purposes, the chief appraiser shall indicate on the notice that the preceding year's taxes may not be increased.

(d) [~~(e) On the notice, the chief appraiser shall enclose the information required by Subsections (b)(2)-(6) of this section in a printed rectangle with dimensions of not less than 15 square inches. The chief appraiser shall have the information required by Subsections (b)(2)-(5) printed in bold-faced type that is distinct from and located above the other information enclosed in the rectangle.~~

[~~(f)~~] Failure to receive the notice required by this section does not affect the validity of the appraisal of the property, the imposition of any tax on the basis of the appraisal, the existence of any tax lien, or any proceeding instituted to collect the tax.

(e) [~~(g)~~] The chief appraiser, with the approval of the appraisal district board of directors, may dispense with the notice required by [~~Subdivision (1) of~~] Subsection (a)(1) [~~(a) of this section~~] if the amount of increase in appraised value is $1,000 or less.

(f) [~~(h)~~] In the notice of appraised value for real property, the chief appraiser shall list separately:

(1) the market value of the land; and

(2) the total market value of the structures and other improvements on the property.

(g) [~~(i)~~] By May 15 or as soon thereafter as practicable, the chief appraiser shall deliver a written notice to the owner of each property not included in a notice required to be delivered under Subsection (a), if the property was reappraised in the current tax year, if the ownership of the property changed during the preceding year, or if the property owner or the agent of a property owner authorized under Section 1.111 makes a written request for the notice. The chief appraiser shall separate real from personal property and include in the notice for each property:

(1) the appraised value of the property in the preceding year;

(2) the appraised value of the property for the current year and the kind of each partial exemption, if any, approved for the current year;

(3) a detailed explanation of the time and procedure for protesting the value; and

(4) the date and place the appraisal review board will begin hearing protests.

(h) A notice required by Subsection (a) or (g) must be in the form of a letter.

(i) [~~(j)~~] Delivery with a notice required by Subsection (a) or (g) [~~(i)~~] of a copy of the pamphlet published by the comptroller under Section 5.06 or a copy of the notice published by the chief appraiser under Section 41.70 is sufficient to comply with the requirement that the notice include the information specified by Subsection (b)(7) or (g)(3) [~~(i)(3)~~], as applicable.

(j) [~~(k)~~] The chief appraiser shall include with a notice required by Subsection (a) or (g) [~~(i)~~]:

(1) a copy of a notice of protest form as prescribed by the comptroller under Section 41.44(d); and

(2) instructions for completing and mailing the form to the appraisal review board and requesting a hearing on the protest.

SECTION 2. This Act takes effect January 1, 2000.

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 1961**

Senator Barrientos submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 1961** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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|---|---|
| BARRIENTOS | GRUSENDORF |
| ZAFFIRINI | DUNNAM |
| SIBLEY | OLIVO |
| | DUTTON |
| 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 673**

Senator Lindsay submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 673** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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|---|---|
| LINDSAY | CARTER |
| ZAFFIRINI | NAISHTAT |

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| SHAPIRO | LUNA |
| MONCRIEF | DANBURG |
| 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 103**

Senator Bivins submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 103** 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.

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|---|---|
| BIVINS | GRUSENDORF |
| CAIN | OLIVEIRA |
| RATLIFF | SMITH |
| ARMBRISTER | |
| On the part of the Senate | On the part of the House |

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. Section 39.022, Education Code, is amended to read as follows:

Sec. 39.022. ASSESSMENT PROGRAM. The State Board of Education by rule shall create and implement a statewide assessment program that is knowledge- and

skills-based [~~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 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 3. Section 39.023, Education Code, is amended by amending Subsections (a), (b), (c), and (e) and adding Subsection (l) to read as follows:

(a) The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills [~~competencies~~] in reading, writing, mathematics, social studies, and science. All students, except students assessed under Subsection (b) or (l) or exempted under Section 39.027, shall be assessed in:

(1) mathematics, annually in grades three through seven without the aid of technology and in grades eight through 11 with the aid of technology on any assessment instruments that include algebra;

(2) reading [~~and mathematics~~], annually in grades three through nine [~~eight~~];

(3) [~~(2)~~] writing, including spelling and grammar, 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 grades five and 10 [~~at an appropriate grade level determined by the State Board of Education~~].

(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).

(c) The agency shall also adopt secondary exit-level assessment instruments designed to be administered to students in grade 11 to assess essential knowledge and skills [~~competencies~~] in mathematics, [~~and~~] English language arts, social studies, and science. The mathematics section must include at least Algebra I and geometry with the aid of technology. The English language arts section must include at least English III and must include the assessment of essential knowledge and skills in writing [~~competencies~~]. The social studies section must include early American and United States history. The science section must include at least biology and integrated chemistry and physics. The assessment instruments must be designed to assess a student's mastery of minimum skills necessary for high school graduation and readiness to enroll in an institution of higher education. 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 State Board of Education shall administer the assessment instruments. The 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 State Board of Education, the agency shall release the questions and answer keys to each assessment instrument administered under Subsection (a), (b), (c), or (l) [~~(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.

(l) The State Board of Education shall adopt rules for the administration of the assessment instruments adopted under Subsection (a) in Spanish to students in grades three through six who are of limited English proficiency, as defined by Section 29.052, and whose primary language is Spanish. 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). The language proficiency assessment committee established under Section 29.063 shall determine which students are administered assessment instruments in Spanish under this subsection.

SECTION 4. Subsection (b), Section 39.024, Education Code, is amended to read as follows:

(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.

SECTION 5. 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). This subsection does not require a student to demonstrate readiness to enroll in an institution of higher education [~~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 6. Section 39.027, Education Code, is amended by amending Subsections (a) 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 or is a recent unschooled immigrant enrolled for less than one year.

(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 under 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 performance report under Section 39.053, and the comprehensive biennial report under Section 39.182.

(f) In this section, "average daily attendance" is computed in the manner provided by Section 42.005.

SECTION 7. 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), and (l), 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 (6) and shall project the standards for each of those levels of performance for succeeding years. 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.

SECTION 8. 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.

SECTION 9. 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 State Board of Education 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 State Board of Education 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 State Board of Education 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 10. (a) The State Board of Education shall administer assessment instruments in accordance with rules adopted under Subsection (l), Section 39.023, Education Code, as added by this Act, not later than the 1999-2000 school year.

(b) The performance of students under an assessment instrument prescribed under Subsection (l), Section 39.023, Education Code, as added by this Act, shall be included in the accountability system as provided by Subsection (b), Section 39.051, Education Code, as amended by this Act not later than the 1999-2000 school year.

(c) Subdivision (3), Subsection (a), Section 39.027, Education Code, as amended by this Act, applies beginning with the 1999-2000 school year.

SECTION 11. (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 Act 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 required by Subsection (a) of this section 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.

(c) The commissioner of education shall conduct a study to determine the need to expand the assessment system under Subchapter B, Chapter 39, Education Code, as amended by this Act, to include the assessment in grades seven and eight of students whose primary language is Spanish and other students who are of limited English proficiency as defined by Section 29.052, Education Code.

(d) Not later than December 1, 2000, the commissioner of education shall report the results of the study required by Subsection (c) of this section 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 12. This Act takes effect September 1, 1999.

SECTION 13. 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 571**

Senator Nelson submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 571** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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|---|---|
| NELSON | HUPP |
| SHAPIRO | KEEL |
| WENTWORTH | NAJERA |
| HAYWOOD | |
| 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 628

Senator Shapiro submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 628** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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|---|---|
| SHAPIRO | HOPE |
| JACKSON | HINOJOSA |
| WEST | DUNNAM |
| FRASER | WISE |
| NELSON | GREEN |
| 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 1188

Senator Shapiro submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 1188** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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|---|---|
| SHAPIRO | GALLEGO |
| FRASER | B. TURNER |
| NELSON | KEEL |
| ARMBRISTER | HUPP |
| DUNCAN | |
| 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 2510**

Senator Shapleigh submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 2510** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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|---|---|
| SHAPLEIGH | DUKES |
| BERNSEN | BRIMER |
| BROWN | GEORGE |
| SIBLEY | RITTER |
| WEST | |
| 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 86**

Senator Nelson submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 86** 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.

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| NELSON | DANBURG |
| WEST | HUNTER |
| BARRIENTOS | S. TURNER |
| FRASER | MERRITT |
| SIBLEY | BRIMER |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to the protection of telecommunications and electric services customers; providing penalties.

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

SECTION 1. Section 11.002, Utilities Code, is amended by adding Subsection (c) to read as follows:

(c) Significant changes have occurred in the telecommunications and electric power industries since the Public Utility Regulatory Act was originally adopted. 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 title to grant the Public Utility Commission of Texas authority to make and enforce rules necessary to protect customers of telecommunications and electric services consistent with the public interest.

SECTION 2. 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 17 or 55.

SECTION 3. Subtitle A, Title 2, Utilities Code, is amended by adding Chapter 17 to read as follows:

CHAPTER 17. CUSTOMER PROTECTION
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 17.001. CUSTOMER PROTECTION POLICY. (a) The legislature finds that new developments in telecommunications services and the production and delivery of electricity, 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 retail customer protection standards and confer on the commission authority to adopt and enforce rules to protect retail 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.

(e) Nothing in this chapter authorizes a customer to receive retail electric service from a person other than a certificated retail electric utility.

Sec. 17.002. 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, retail electric provider, or electric utility that issues a bill directly to a customer for any telecommunications or electric 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 or retail electric 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 or retail electric service.

(5) "Electric utility" has the meaning assigned by Section 31.002.

(6) "Retail electric provider" means a person that sells electric energy to retail customers in this state after the legislature authorizes a customer to receive retail electric service from a person other than a certificated retail electric utility.

(7) "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.

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

Sec. 17.003. CUSTOMER AWARENESS. (a) The commission shall promote public awareness of changes in the electric and 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, a retail electric provider, or an electric 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. 17.004. CUSTOMER PROTECTION STANDARDS. (a) All buyers of telecommunications and retail electric 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, a retail electric provider, or an electric utility, where that choice is permitted by law, 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, and the basis for any claim of environmental benefits of certain production facilities;

(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, a retail electric provider, or an electric 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 metering and 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) after retail competition begins as authorized by the legislature, programs provided by retail electric providers that offer eligible low-income customers energy efficiency programs, 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, a retail electric provider, or an electric utility relating to customer deposits and the extension of credit, switching fees, levelized billing programs, and termination of service and to energy efficiency programs, 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 or to abridge the rights of low-income customers to receive benefits through pending or operating programs in effect at the time of the enactment of this chapter.

(f) The commission shall adopt rules to provide automatic enrollment of eligible utility customers for lifeline telephone service and reduced electric rates available to low-income households. Each state agency, on the request of the commission, shall assist in the adoption and implementation of those rules.

(g) Notwithstanding any other provision of this title, the rules adopted under Subsection (b) shall provide full, concurrent reimbursement for the costs of any programs provided under Subsection (a)(11) and for reimbursement for the difference between any affordable rate package provided under Subsection (a)(11) and any rates otherwise applicable.

Sec. 17.005. PROTECTIONS FOR CUSTOMERS OF MUNICIPALLY OWNED UTILITIES. A municipally owned utility may not be deemed to be a "service provider" or "billing agent" for purposes of Sections 17.156(b) and (e). The governing body of a municipally owned utility shall adopt, implement, and enforce rules that shall have the effect of accomplishing the objectives set out in Sections 17.004(a) and (b) and 17.102, as to the municipally owned utility within its certificated service area. The governing body of a municipally owned utility or its designee shall perform the dispute resolution function provided for by Section 17.157 for disputes arising

from services provided by the municipally owned utility to electric customers served within the municipally owned utility's certificated service area. With respect to electric customers served by a municipally owned utility outside its certificated service area or otherwise served through others' distribution facilities, after retail competition begins as authorized by the legislature, the provisions of this chapter as administered by the commission apply. Nothing in this chapter shall be deemed to apply to a wholesale customer of a municipally owned utility.

Sec. 17.006. PROTECTIONS FOR CUSTOMERS OF ELECTRIC COOPERATIVES. An electric cooperative shall not be deemed to be a "service provider" or "billing agent" for purposes of Sections 17.156(b) and (e). The electric cooperative shall adopt, implement, and enforce rules that shall have the effect of accomplishing the objectives set out in Sections 17.004(a) and (b) and 17.102. The board of directors of the electric cooperative or its designee shall perform the dispute resolution function provided for by Section 17.157 for electric customers served by the electric cooperative within its certificated service area. With respect to electric customers served by an electric cooperative outside its certificated service area or otherwise served through others' distribution facilities, after the legislature authorizes retail competition, the provisions of this chapter as administered by the commission shall apply. Nothing in this chapter shall be deemed to apply to a wholesale customer of an electric cooperative.

SUBCHAPTER B. CERTIFICATION, REGISTRATION, AND REPORTING REQUIREMENTS

Sec. 17.051. ADOPTION OF RULES. (a) The commission shall adopt rules relating to certification, registration, and reporting requirements for a certificated telecommunications utility, a retail electric provider, or an electric utility, as well as all telecommunications utilities that are not dominant carriers, pay telephone providers, qualifying facilities that are selling capacity into the wholesale or retail market, exempt wholesale generators, and power marketers.

(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. 17.052. 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, except that this requirement does not apply to municipally owned utilities;

(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 an electric utility except as provided by Section 37.059 or 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. 17.053. REPORTS. The commission may require a telecommunications service provider, a retail electric provider, or an electric utility 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. 17.101. POLICY. It is the policy of this state that all customers be protected from the unauthorized switching of a telecommunications service provider, a retail electric provider, or an electric utility selected by the customer to provide service, where choice is permitted by law.

Sec. 17.102. 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, retail electric provider, or electric utility, where choice is permitted by law;

(2) provide for clear, easily understandable identification, in each bill sent to a customer, of all telecommunications service providers, retail electric providers, or electric utilities 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 retail electric provider, or the electric utility the right to provide service in this state, except that the commission may not revoke a certificate of convenience and necessity of an electric utility except as provided by Section 37.059 or a certificate of convenience and necessity of a telecommunications utility except as provided by Section 54.008.

SUBCHAPTER D. PROTECTION AGAINST UNAUTHORIZED CHARGES

Sec. 17.151. REQUIREMENTS FOR SUBMITTING CHARGES. (a) A service provider, retail electric provider, or billing agent may submit charges for a new product or service to be billed on a customer's telephone or retail electric 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 or electric 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 or electric 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 or electric 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 or an electric utility 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. 17.152. RESPONSIBILITIES OF BILLING UTILITY. (a) If a customer's telephone or retail electric 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 or electric 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 or electric 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 or electric service to any customer for nonpayment of an unauthorized charge; or

(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.

Sec. 17.153. 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 or retail electric 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 17.152(a).

Sec. 17.154. 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. 17.155. PROVIDING COPY OF RECORDS. A billing utility shall provide a copy of records maintained under Sections 17.151(c), 17.152, and 17.154 to the commission staff on request. A service provider shall provide a copy of records maintained under Sections 17.151(b) and 17.153 to the commission on request.

Sec. 17.156. 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, retail electric provider, or electric utility, by this action denying the telecommunications service provider, retail electric provider, or electric utility the right to provide service in this state, except that the commission may not revoke a certificate of convenience and necessity of an electric utility except as provided by Section 37.059 or 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. 17.157. DISPUTES. (a) The commission may resolve disputes between a retail customer and a billing utility, service provider, telecommunications utility, retail electric provider, or electric utility.

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

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

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

(3) require a billing utility, service provider, retail electric provider, or electric utility to refund or credit overcharges or unauthorized charges with interest if the billing utility, service provider, retail electric provider, or electric utility 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, a retail electric provider, or an electric utility that encompasses a geographic area in which more than one provider has been certificated 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. 17.158. 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 4. Section 51.002(10), Utilities Code, is amended to read as follows:

(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 17 or 55;

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

Sec. 55.012. 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 6. 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.

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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was filed with the Secretary of the Senate.

## CONFERENCE COMMITTEE REPORT ON HOUSE BILL 662

Senator Wentworth submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 662** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

| | |
|---|---|
| WENTWORTH | HILDERBRAN |
| HARRIS | SWINFORD |
| ELLIS | B. BROWN |
| 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 918

Senator Wentworth submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 918** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

| | |
|---|---|
| WENTWORTH | A. REYNA |
| BROWN | THOMPSON |
| ELLIS | CAPELO |
| DUNCAN | DESHOTEL |
| 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 2190

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 2190** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

| | |
|---|---|
| ARMBRISTER | HINOJOSA |
| DUNCAN | DUNNAM |
| WHITMIRE | KEEL |
| HARRIS | TALTON |
| NELSON | WISE |
| 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 3457

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 3457** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

| | |
|---|---|
| ARMBRISTER | HINOJOSA |
| WHITMIRE | TALTON |
| JACKSON | KEEL |
| NELSON | WISE |
| | SMITH |
| 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 50

Senator Nelson submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 50** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

| | |
|---|---|
| NELSON | NAISHTAT |
| ARMBRISTER | P. KING |
| SHAPIRO | A. REYNA |
| MONCRIEF | PICKETT |
| JACKSON | DUKES |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to the application for, issuance of, and contents of a protective order.

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

SECTION 1. Subsection (a), Section 82.008, Family Code, is amended to read as follows:

(a) An [~~If an~~] application for a protective order [~~alleges that the respondent has violated a previously rendered protective order by committing an act prohibited by the order and~~] that is filed after a previously rendered [~~the~~] protective order has expired [~~after the date that the violation occurred, the application for the new protective order~~] must include:

(1) a copy of the expired protective order attached to the application or, if a copy of the expired protective order is unavailable, a statement that the order is unavailable to the applicant and that a copy of the order will be filed with the court before the hearing on the application;

(2) a description of either:

(A) the violation of the expired protective order, if the application alleges that the respondent violated the expired protective order by committing an act prohibited by that order before the order expired; or

(B) the threatened harm that reasonably places the applicant in fear of imminent physical harm, bodily injury, assault, or sexual assault; and

(3) if a violation of the expired order is alleged, a statement that the violation of the expired order has not been grounds for any other order protecting the applicant that has been issued or requested under this subtitle.

SECTION 2. Subchapter A, Chapter 82, Family Code, is amended by adding Section 82.0085 to read as follows:

Sec. 82.0085. APPLICATION FILED BEFORE EXPIRATION OF PREVIOUSLY RENDERED PROTECTIVE ORDER. (a) If an application for a protective order alleges that an unexpired protective order applicable to the respondent is due to expire not later than the 30th day after the date the application was filed, the application for the subsequent protective order must include:

(1) a copy of the previously rendered protective order attached to the application or, if a copy of the previously rendered protective order is unavailable, a statement that the order is unavailable to the applicant and that a copy of the order will be filed with the court before the hearing on the application; and

(2) a description of the threatened harm that reasonably places the applicant in fear of imminent physical harm, bodily injury, assault, or sexual assault.

(b) The procedural requirements for an original application for a protective order apply to a protective order requested under this section.

SECTION 3. Section 85.025, Family Code, is amended to read as follows:

Sec. 85.025. DURATION OF PROTECTIVE ORDER. (a) Except as provided by Subsection (b) or (c), an [~~An~~] order under this subtitle is effective:

(1) for the period stated in the order, not to exceed two years; or

(2) if a period is not stated in the order, until [~~one year. An order that does not specify the period for which the order is effective expires on~~] the second [~~first~~] anniversary of the date the order was issued.

(b) A person who is the subject of a protective order may file a motion not earlier than the first anniversary of the date on which the order was rendered requesting that the court review the protective order and determine whether there is a continuing need for the order. After a hearing on the motion, if the court finds there is a continuing need for the protective order, the protective order remains in effect until the date the order expires under this section. If the court finds there is no continuing need for the protective order, the court shall order that the protective order expires on a date set by the court.

(c) If a person who is the subject of a protective order is confined or imprisoned on the date the protective order would expire under Subsection (a), the period for which the order is effective is extended, and the order expires on the first anniversary of the date the person is released from confinement or imprisonment.

SECTION 4. Section 85.026, Family Code, is amended to read as follows:

Sec. 85.026. WARNING ON PROTECTIVE ORDER. (a) Each protective order issued under this subtitle, including a temporary ex parte order, must contain the following prominently displayed statements [~~printed statement~~] in boldfaced [~~bold-faced~~] type, [~~or~~] capital letters, or underlined:

"A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF AS MUCH AS $500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH.

"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER.

"IT IS UNLAWFUL FOR ANY PERSON WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A FIREARM OR AMMUNITION."

(b) Each protective order issued under this subtitle, except for a temporary ex parte order, must contain the following prominently displayed [~~printed~~] statement in boldfaced [~~bold-faced~~] type, [~~or~~] capital letters, or underlined:

"A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS $4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS."

[~~(c) Each protective order issued under this subtitle, including a temporary ex parte order, must contain the following printed statement in bold-faced type or capital letters:~~

[~~"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER.~~"]

SECTION 5. Section 87.002, Family Code, is amended to read as follows:

Sec. 87.002. MODIFICATION MAY NOT EXTEND DURATION OF ORDER. A protective order may not be modified to extend the period of the order's validity beyond the second [~~first~~] anniversary of the date the original order was rendered or beyond the date the order expires under Section 85.025(c), whichever date occurs later.

SECTION 6. (a) This Act takes effect September 1, 1999.

(b) The change in law made by this Act to Subchapter A, Chapter 82, Family Code, by the amendment of Subsection (a), Section 82.008, and the addition of Section 82.0085 applies to an application for a protective order that is filed on or after the effective date of this Act. An application for a protective order that is filed before that date is covered by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(c) The change in law made by this Act to Sections 85.025, 85.026, and 87.002, Family Code, applies to a protective order issued on or after the effective date of this Act. A protective order issued before that date is governed by the law in effect on the date the order was issued, and the former law is continued in effect for that purpose.

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 HOUSE BILL 1453

Senator Madla submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 1453** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

| | |
|---|---|
| MADLA | SMITH |
| ARMBRISTER | SEAMAN |
| SIBLEY | THOMPSON |
| CARONA | SMITHEE |
| 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 1799

Senator Ratliff submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 1799** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

| | |
|---|---|
| RATLIFF | EILAND |
| MADLA | WILSON |
| ARMBRISTER | PITTS |
| | COLEMAN |
| | P. KING |
| On the part of the Senate | On the part of the House |

The Conference Committee Report was again filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON HOUSE BILL 844**

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 844** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

| | |
|---|---|
| ARMBRISTER | WILSON |
| BARRIENTOS | FLORES |
| BROWN | HAGGERTY |
| GALLEGOS | J. MORENO |
| RATLIFF | YARBROUGH |
| 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 746**

Senator West submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 746** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

| | |
|---|---|
| WEST | GALLEGO |
| OGDEN | FARABEE |
| BERNSEN | WOHLGEMUTH |
| HARRIS | |
| CAIN | |
| 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 1983**

Senator Madla submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 1983** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

| | |
|---|---|
| MADLA | BOSSE |
| SIBLEY | MCCALL |
| HAYWOOD | KEEL |
| DUNCAN | GRAY |
| | 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.

**CONFERENCE COMMITTEE REPORT ON HOUSE BILL 932**

Senator Shapleigh submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 932** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

| | |
|---|---|
| SHAPLEIGH | HAWLEY |
| BERNSEN | ALEXANDER |
| JACKSON | NORIEGA |
| SHAPIRO | UHER |
| HAYWOOD | |
| 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 1933

Senator Shapiro submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 1933** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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|---|---|
| SHAPIRO | G. LEWIS |
| FRASER | FARABEE |
| LINDSAY | CHISUM |
| WENTWORTH | |
| 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 3211

Senator Duncan submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 3211** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

| | |
|---|---|
| DUNCAN | MCCALL |
| ARMBRISTER | Y. DAVIS |
| RATLIFF | WEST |
| MONCRIEF | HEFLIN |
| FRASER | |
| 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 957

Senator Madla submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 957** 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.

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|---|---|
| MADLA | EILAND |
| LUCIO | THOMPSON |
| BROWN | SMITHEE |
| SIBLEY | SEAMAN |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to the licensing of certain persons who provide services related to the business of insurance.

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

ARTICLE 1. SPECIALTY LICENSES

SECTION 1.01. Subchapter A, Chapter 21, Insurance Code, is amended by adding Article 21.09 to read as follows:

Art. 21.09. SPECIALTY LICENSES

Sec. 1. GENERAL PROVISIONS. (a) The commissioner may issue a specialty license to an applicant who has complied with the requirements of this article. A specialty license authorizes the license holder to act as an agent for the types of insurance specified in this article for any insurer authorized to write these types of insurance in this state. A person who holds a license under this article is known as a "specialty license holder."

(b) For a specialty license to be issued under this article, the applicant must submit to the commissioner:

(1) a written application, signed by the applicant, on a form and supplements to the form prescribed by the commissioner, that contains the information prescribed by the commissioner;

(2) a certification by an insurer authorized to do business in this state that:

(A) is signed by an officer of the insurer and affirmed as true under the penalties of perjury; and

(B) states that:

(i) the insurer has satisfied itself that the named applicant is trustworthy and competent to act as the insurer's agent for a limited purpose authorized by this article; and

(ii) the insurer will appoint the applicant to act as the agent for a type of insurance permitted by this article, if the specialty license applied for is issued by the department; and

(3) a nonrefundable license fee set by the department in an amount necessary to administer this article.

(c) A specialty license issued under this article authorizes an employee of the license holder to act as an agent with respect to the kinds of insurance specified in this article if the employee:

(1) is trained under Subsection (d) of this section to act individually on behalf of the specialty license holder;

(2) is acting on behalf of and under the supervision of the license holder; and

(3) is not compensated based primarily on the amount of insurance sold by the employee under this article.

(d) A person licensed under this article may not allow an individual to act on the license holder's behalf with respect to the specific type of insurance that the license holder is authorized to offer unless that individual has completed an approved training program. An insurer that writes the specific type of insurance for which the specialty license is sought must provide the materials for the training program to the license holder. The insurer must submit the training program to the commissioner for approval before the training program is used. The training program must meet the following minimum standards:

(1) each trainee must receive basic instruction about the kinds of insurance the license holder is authorized to offer for purchase by prospective consumers;

(2) each trainee must be instructed to inform a prospective consumer that, except as may be specifically provided by another law of this state or the United States, the purchase of insurance specified in this article is not required in order to complete the associated consumer transaction; and

(3) each trainee must be instructed with respect to the disclosures required to be made to consumers.

(e) Except as otherwise provided by this article, a specialty license holder acting under this article shall comply with all applicable provisions of this subchapter.

(f) Notwithstanding any other provision of this subchapter or any rule adopted by the commissioner, a specialty license holder is not required to treat premiums collected from a consumer purchasing insurance when completing an associated consumer transaction as money received in a fiduciary capacity if:

(1) the insurer represented by the specialty license holder has consented in writing, signed by an officer of the insurer, that premiums need not be segregated from money received by the license holder on account of the associated consumer transaction; and

(2) the charges for insurance coverage are itemized but not billed to the consumer separately from the charges for the associated consumer transaction.

(g) Insurance may not be issued under this article unless:

(1) at each location at which sales of insurance policies covered by this article occur, brochures or other written materials are prominently displayed and readily available to the prospective consumer that:

(A) summarize, clearly and correctly, the material terms of insurance coverage offered to consumers, including the identity of the insurer;

(B) disclose that the policies offered by the license holder may provide a duplication of coverage already provided by a consumer's personal auto insurance

policy, homeowner's insurance policy, personal liability insurance policy, or other source of coverage;

(C) state that, except as specifically provided by another law of this state or the United States, the purchase by the consumer of the kinds of insurance specified in this article is not required to complete the associated consumer transaction;

(D) describe the process for filing a claim in the event the consumer elects to purchase coverage and in the event of a claim; and

(E) contain any additional information on the price, benefits, exclusions, conditions, or other limitations of the policies required by the commissioner by rule; and

(2) evidence of coverage is provided to each consumer who elects to purchase the coverage.

(h) If a specialty license holder violates this subchapter, the commissioner may:

(1) impose any disciplinary action authorized by Article 21.01-2 of this code; or

(2) after notice and opportunity for hearing, impose other penalties, including suspending the transaction of insurance at specific locations where a violation of this subchapter has occurred, as the commissioner considers necessary or appropriate to implement the purposes of this subchapter.

(i) A specialty license holder may not in any manner advertise, represent, or otherwise hold out the license holder or any employee of the license holder as a licensed insurance agent under another article of this code unless the entity or individual actually holds the applicable license.

(j) A person who holds a general agent's license issued under Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), as amended, or Article 21.14 of this code or who holds a substantially equivalent license under this code, as determined by the commissioner, is not required to obtain a specialty license but is subject to the other requirements of this article in the solicitation, sale, or delivery of an insurance product subject to this article.

(k) Each insurance company appointing an agent under this article shall submit a certification of the appointment signed by an officer of the insurer and affirm that the insurer has satisfied itself that the license holder is trustworthy and competent to act as an insurance agent on behalf of the insurer.

(l) An examination is not required for issuance of a license under this article and continuing education requirements do not apply to a license issued under this article.

(m) A person who is licensed as an agent for a legal reserve life insurance company or as a local recording agent, or who holds a substantially equivalent license under this code, as determined by the commissioner, and who enters into a contract with an insurer to act as the insurer's agent in soliciting or writing policies or certificates of insurance covered by this article may assign and transfer to the agent's employer any commission, fee, or other compensation to be paid to the agent under the agent's contract with the insurer, but only if the sale of the insurance product occurred within the scope of the agent's employment.

Sec. 2. RENTAL CAR COMPANIES. (a) In this section:

(1) "Rental agreement" means a written agreement that sets forth the terms and conditions governing the use of a vehicle or vehicle equipment provided by a rental car company.

(2) "Rental car company" means a person engaged in the business of providing leased or rented vehicles or vehicle equipment to the public.

(3) "Renter" means a person who obtains the use of a vehicle or vehicle equipment from a rental car company under the terms of a rental agreement.

(4) "Vehicle" means:

(A) a private passenger motor vehicle, including passenger vans and minivans that are primarily intended for the transport of persons;

(B) a motor home;

(C) a motorcycle;

(D) a trailer with a gross vehicle weight rating of 10,000 pounds or less; or

(E) a truck with a gross vehicle weight rating of 26,000 pounds or less the operation of which does not require a commercial driver's license.

(5) "Vehicle equipment" means a cartop carrier, tow bar, or tow dolly specifically designed for use with a vehicle.

(b) Notwithstanding any other provision of this article or this code, the commissioner shall issue a specialty license under Section 1 of this article to a rental car company, or to the franchisee of a rental car company, that complies with this section only for the limited purposes set forth in this section.

(c) The rental car company or franchisee licensed under Section 1 of this article may act as an agent for an authorized insurer only in connection with the rental of vehicles or vehicle equipment and only with respect to:

(1) excess liability insurance that provides coverage to the rental car company or franchisee and renters and other authorized drivers of rental vehicles, in excess of the standard liability limits provided by the rental car company in the rental agreement, for liability arising from the negligent operation or use of the rental vehicle or vehicle equipment;

(2) accident and health insurance that provides coverage to renters and other vehicle occupants for accidental death or dismemberment and for medical expenses resulting from an accident involving the rental vehicle or vehicle equipment that occurs during the rental period;

(3) personal effects insurance that provides coverage to renters and other rental vehicle occupants for the loss of, or damage to, personal effects or household belongings that occurs during the rental period; or

(4) any other coverage that the commissioner may approve as meaningful and appropriate in connection with the rental of vehicles or vehicle equipment.

(d) Insurance may not be issued under this section unless:

(1) the rental period under the rental agreement does not exceed 30 consecutive days; and

(2) the brochures or other written materials containing the disclosures required by Section 1(g) of this article are prominently displayed and readily available to the prospective renter of a vehicle or vehicle equipment.

Sec. 3. CREDIT INSURANCE. (a) In this section:

(1) "Credit insurance" includes:

(A) credit life insurance;

(B) credit accident and health insurance;

(C) credit property insurance;

(D) credit involuntary unemployment insurance; and

(E) insurance that covers the difference between the actual cash value of a motor vehicle used as security for a loan or lease and the outstanding balance of that loan or lease in the event of loss or damage in which the vehicle is rendered an actual

or constructive total loss while the debt for which the vehicle serves as security exceeds the actual cash value of the vehicle.

(2) "Credit insurance agent" means a person licensed to sell credit insurance under this article as specifically provided by this section.

(3) "Credit property insurance" means insurance that provides coverage on personal property used as collateral for securing a personal or consumer loan or on personal property under an installment sales agreement or through a consumer credit transaction that is purchased in connection with or in relation to the personal or consumer loan, installment sale, or consumer credit transaction. The term does not include insurance that provides theft, collision, liability, property damage, or comprehensive insurance coverage on an automobile, motorized aircraft, motorcycle, truck, truck-tractor, traction engine, or any other self-propelled vehicle that is designed primarily for operation in the air, or on highways, roadways, waterways, or the sea, and the operating equipment of the self-propelled vehicle or craft, or that is necessitated by reason of the liability imposed by law for damages arising out of the ownership, operation, maintenance, or use of any of those vehicles and crafts, other than single interest coverage on any vehicle or craft described in this subdivision that insures the interest of the creditor in the same manner as collateral for a loan.

(b) Notwithstanding any other provision of this article or this code, the commissioner may issue a license under Section 1 of this article to a retail distributor of goods, an automobile dealer, a bank, a state or federal savings and loan, a state or federal credit union, a finance company, a production credit association, a manufactured home retailer, or a mobile home retailer that complies with this section only for the limited purposes set forth in this section.

(c) On appointment by the insurance company, a credit insurance agent may act as the agent of any company authorized to engage in the business of insurance under this code in the sale of any type of credit insurance that the company is authorized to write. The authority conferred under this section specifically permits the sale of both individual and group credit insurance.

(d) A license holder and the license holder's representative are not required to make the disclosures required by Section 1(g) of this article if the license holder or the license holder's representative complies with all disclosure requirements prescribed by another provision of this code or another law of this state or the United States relating to the sale or delivery of a credit insurance product that is subject to this section.

Sec. 4. TRAVEL INSURANCE LICENSE. (a) In this section:

(1) "Planned trip" means any journey or travel arranged through the services of a travel agency.

(2) "Travel agency" means an entity engaged in the business of selling or arranging transportation or accommodations for the public.

(3) "Traveler" means an individual who seeks the assistance of a travel agency in connection with the planning and purchase of a trip.

(b) Notwithstanding any other provision of this article or this code, the commissioner may issue a specialty license under Section 1 of this article to a travel agency, the franchisee of a travel agency, or a public carrier that complies with this section only for the limited purposes set forth in this section.

(c) The travel agency or franchisee licensed under Section 1 of this article may act as an agent for any authorized insurer only in connection with the sale or arrangement of transportation or accommodations for travelers and only with respect to:

(1) accident and health insurance that provides coverage to a traveler for accidental death or dismemberment and for medical expenses resulting from an accident involving the traveler that occurs during the planned trip;

(2) insurance that provides coverage to a traveler for expenses incurred as a result of trip cancellation or interruption of a planned trip;

(3) personal effects insurance that provides coverage to a traveler for the loss of, or damage to, personal effects that occurs during the planned trip;

(4) life insurance covering risks of travel during a planned trip that does not exceed $150,000 on any one life; or

(5) any other coverage that the commissioner may approve as meaningful and appropriate in connection with the transportation or accommodations arranged through a travel agency.

(d) Insurance may not be issued under this section unless the brochures or other written materials containing the disclosures required by Section 1(g) of this article are prominently displayed and readily available to the prospective traveler.

Sec. 5. SELF-SERVICE STORAGE FACILITY LICENSE. (a) In this section:

(1) "Rental agreement" means a written agreement that sets forth the terms and conditions governing the use of storage space provided by a self-service storage facility.

(2) "Renter" means a person who obtains the use of storage space from a self-service storage facility under a rental agreement.

(3) "Self-service storage facility" means a person engaged in the business of providing leased or rented storage space to the public.

(4) "Storage space" means a room, unit, locker, or open space offered for rental to the public for temporary storage of personal belongings or light commercial goods.

(b) Notwithstanding any other provision of this article or this code, the commissioner may issue a specialty license under Section 1 of this article to a self-service storage facility or to the franchisee of a self-service storage facility that complies with this section only for the limited purposes set forth in this section.

(c) A self-service storage facility or franchisee licensed under Section 1 of this article may act as an agent for any authorized insurer only in connection with the rental of storage space and only with respect to:

(1) insurance that provides hazard insurance coverage to renters for the loss of, or damage to, tangible personal property in storage or in transit during the rental period; or

(2) any other coverage the commissioner may approve as meaningful and appropriate in connection with the rental of storage space.

(d) Insurance may not be issued under this section unless the brochures or other written materials containing the disclosures required by Section 1(g) of this article are prominently displayed and readily available to the prospective renter.

Sec. 6. RULES. The commissioner may adopt rules necessary to implement this article and to meet the minimum requirements of federal law and regulations.

ARTICLE 2. LIFE AND HEALTH
INSURANCE COUNSELOR LICENSE

SECTION 2.01. Chapter 29, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-2, Vernon's Texas Insurance Code), is transferred to the Insurance Code, redesignated as Article 21.07-2, Insurance Code, and amended to read as follows:

Art. 21.07-2. LIFE AND HEALTH INSURANCE COUNSELOR LICENSE

Sec. 1. DEFINITION OF TERM. The term "Life and Health Insurance Counselor" as used in this article [~~Act~~] shall mean any person who, for money, fee, commission or any other thing of value offers to examine, or examines any policy of life, accident, or health insurance, any health benefit plan, or any annuity or pure endowment contract for the purpose of giving, or gives, or offers to give, any advice, counsel, recommendation or information in respect to the terms, conditions, benefits, coverage or premium of any such policy or contract, or in respect to the expediency or advisability of altering, changing, exchanging, converting, replacing, surrendering, continuing or rejecting any such policy, plan, or contract, or of accepting or procuring any such policy, plan, or contract from any insurer or issuer of a health benefit plan, or who in or on advertisements, cards, signs, circulars or letterheads, or elsewhere, or in any other way or manner by which public announcements are made, uses the title "insurance adviser," "insurance specialist," "insurance counselor," "insurance analyst," "policyholders' adviser," "policyholders' counselor," or any other similar title, or any title indicating that the person [~~he~~] gives, or is engaged in the business of giving advice, counsel, recommendation or information to an insured, or a beneficiary, or any person having any interest in a life, accident, or health insurance contract, health benefit plan contract, annuity or pure endowment contract. This definition is not intended to prevent a person who has obtained the professional designation of chartered life underwriter (CLU), chartered financial consultant (ChFC) or certified financial planner (CFP) by completing a course of instruction recognized within the business of insurance from using that designation to indicate professional achievement.

Sec. 2. LICENSE REQUIRED; ISSUANCE BY DEPARTMENT. No person shall act as a Life and Health Insurance Counselor, as defined in Section 1 of this article [~~hereof~~], unless authorized so to act by a license issued by the department under [~~Board of Insurance Commissioners of the State of Texas pursuant to the provisions of~~] this article [~~Act~~].

Sec. 3. EXEMPTIONS. The provisions of this article [~~Act~~] shall not apply to the following persons:

(a) Licensed agents for a life insurance company while acting for an insurer as its agent.

(b) Licensed attorneys at law of this State when acting within the course or scope of their profession.

(c) Licensed public accountants of this State while acting within the course or scope of their profession.

(d) A regular salaried officer or employee of an authorized insurer issuing policies of life or health insurance while acting for such insurer in discharging the duties of the [~~his~~] position or employment.

(e) An officer or employee of any bank or trust company who receives no compensation from sources other than the bank or trust company for such activities connected with the [~~his~~] employment.

(f) Employers or their officers or employees, or the trustees of any employee benefit plan, to the extent that such employers, officers, employees or trustees are engaged in the administration or operation of any program of employee benefits involving the use of insurance or annuities issued by a legal reserve life insurance company.

Sec. 4. CONTRACT, WRITING REQUIRED; DUPLICATES; OTHER REQUISITES. No contract or agreement between a Life and Health Insurance Counselor, as defined in this article [~~Act~~], and any other person, firm or corporation, relating to the activities, services, advice, recommendations or information referred to in Section 1 of this article [~~Act~~], shall be enforceable by or on behalf of such Life and Health Insurance Counselor unless it is in writing and executed in duplicate by the person, firm or corporation to be charged, nor unless one of said duplicates is delivered to and retained by such person, firm or corporation when executed, nor unless such contract or agreement plainly specifies the amount of the fee paid or to be paid by such person, firm or corporation, and the services to be rendered by such Life and Health Insurance Counselor; provided, however, that the foregoing provisions shall not be applicable to any of the persons set out in Section 3 of this article [~~above~~].

Sec. 4a. PROHIBITION OF DUAL COMPENSATION. A person licensed under the provisions of this article [~~Act~~] who is also licensed under Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 ([~~Article 21.07 or~~] Article 21.07-1, Vernon's Texas Insurance [~~of this~~] Code), as amended, and who receives a commission or compensation for [~~his~~] services as an agent licensed under Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 ([~~Article 21.07 or~~] Article 21.07-1, Vernon's Texas Insurance Code), as amended, shall not be entitled to receive a fee for the same services [~~his service~~] to the same client as a Life and Health Insurance Counselor.

Sec. 5. MODE OF LICENSING AND REGULATION. (a) Except as provided by this article, [~~The~~] licensing and regulation of a Life and Health Insurance Counselor, as that term is defined herein, shall be in the same manner and subject to the same requirements as applicable to the licensing of agents under this subchapter [~~of legal reserve life insurance companies as provided in Article 21.07-1 of the Texas Insurance Code, 1951,~~] or as provided by any existing or subsequent applicable law governing the licensing of such agents, and all the provisions thereof are hereby made applicable to applicants and licensees under this article [~~Act~~], except that a Life and Health Insurance Counselor shall not advertise in any manner and shall not circulate materials indicating professional superiority or the performance of professional service in a superior manner; provided, however, that an appointment to act for an insurer shall not be a condition to the licensing of a Life and Health Insurance Counselor.

(b) An [~~In addition to the above requirements, the applicant for licensure as a Life Insurance Counselor shall submit to the Commissioner documentation that he has been licensed as a life insurance agent in excess of three years. After the Insurance Commissioner has satisfied himself as to these requirements, he shall then cause the~~] applicant for a Life and Health Insurance Counselor's license must [~~to~~] sit for an examination administered under Article 21.01-1 of this code that includes [~~which shall include~~] the following five subjects and subject areas:

(1) Fundamentals of life and health insurance;

(2) Group life insurance, pensions and health insurance;

(3) Law, trust and taxation;

(4) Finance and economics; and

(5) Business insurance and estate planning.

(c) No license shall be granted until such individual shall have successfully passed each of the five parts under Subsection (b) of this section. Such examinations may be given and scheduled by the Commissioner at the Commissioner's [~~his~~] discretion. The department shall, without further examination, issue a license under

this article to an individual who, on September 1, 1999, holds a [~~Individuals currently holding~~] Life Insurance Counselor license [~~licenses~~] issued by the department [~~Texas State Board of Insurance, who do not have the equivalent of the requirements above listed, shall have one year from the date of enactment hereof to so qualify~~].

Sec. 6. INTENT OF LEGISLATURE; STATUTES AND AMENDMENTS APPLICABLE. Except as provided by this article, it [~~It~~] is the legislative intent, and it is hereby provided, that the licensing and regulation of any person acting as a Life and Health Insurance Counselor shall be subject to the same statutes and requirements applicable to the licensing and regulation of agents under this subchapter [~~of legal reserve life insurance companies~~]. In event of subsequent legislative enactment applicable to agents under this subchapter [~~of legal reserve life insurance companies in lieu of, or as an amendment to, present Article 21.07 of the Texas Insurance Code~~], it is hereby provided that such statute shall be applicable to any person acting as a Life and Health Insurance Counselor, as defined in this article [~~Act~~].

Sec. 7. VIOLATIONS. [~~(a)~~] A [~~person commits an offense if the person acts as a life insurance counselor without a license issued under this Act or otherwise violates this Act. Each violation constitutes a separate offense. An offense under this subsection is a Class C misdemeanor.~~

[~~(b) In addition to being subject to the penalty imposed under Subsection (a) of this section, a~~] person who commits a violation of this article [~~Act~~] is subject to license revocation under [~~Section 5,~~] Article 21.01-2 of this code[~~, Insurance Code~~]. If the department revokes the license, the license holder is not eligible for a new license for two years after the effective date of the license revocation.

Sec. 8. PARTIAL INVALIDITY. Should any Section or part [~~thereof~~] of this article [~~Act~~] be held to be invalid for any reason, such holding shall not be construed as affecting the validity of any of the remaining Sections or parts of this article [~~thereof~~], it being the legislative intent that the remainder of this article [~~Section~~] shall stand, notwithstanding the invalidity of any Section or part of this article [~~thereof~~].

Sec. 9. CONTINUING EDUCATION. A person who holds a license issued under this article shall complete continuing education as required by rules of the department or any applicable article of this code.

Sec. 10. RULES. The commissioner may adopt rules necessary to implement this article and to meet the minimum requirements of federal law and regulations.

Sec. 11. REFERENCE IN OTHER LAW. A reference in any law to Chapter 29, Acts of the 54th Legislature, Regular Session, 1955, means this article.

ARTICLE 3. ADJUSTERS LICENSES

SECTION 3.01. Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code), is amended by amending Sections 15, 16, 17, and 23 and adding Section 24 to read as follows:

Sec. 15. PLACE OF BUSINESS. Every licensed adjuster shall have and maintain [~~in this state~~] a place of business accessible to the public. Such place of business shall be located where the adjuster principally conducts transactions under the [~~his~~] license. The [~~address of his place of business shall appear on all licenses of the licensee, and the~~] licensee shall promptly notify the commissioner of any change in the location of the place of business [~~thereof~~].

Sec. 16. EXPIRATION AND RENEWAL OF LICENSES. Expiration and renewal of licenses issued under this Act are governed by rules of the department or any applicable article of the Insurance Code or another insurance law of this state.

[~~(a) Except as may be provided by a staggered renewal system adopted under Article 21.01-2, Insurance Code, an adjuster's license expires two years after the date of issuance.~~

[~~(b) Subject to the right of the commissioner to suspend, revoke, or refuse to renew an adjuster's license, any such license may be renewed by filing, on the form prescribed by the commissioner, on or before the expiration date, a written request, by or on behalf of the licensee, for such renewal, accompanied by payment of the renewal fee.~~]

Sec. 17. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. [~~(a)~~] The department may discipline an adjuster or deny an application under department rules or any other applicable article of the Insurance Code or another insurance law of this state. The rules may specify grounds for discipline that are comparable to grounds for discipline of other license holders under this subchapter [~~Section 5, Article 21.01-2, Insurance Code, for any of the following causes:~~

[~~(1) for any cause for which issuance of the license could have been refused had it been existent and been known to the board;~~

[~~(2) if the applicant or licensee willfully violates or knowingly participates in the violation of any provision of this Act;~~

[~~(3) if the applicant or licensee has obtained or attempted to obtain any such license through willful misrepresentation or fraud, or has failed to pass any examination required under this Act;~~

[~~(4) if the applicant or licensee has misappropriated, or converted to the applicant's or licensee's own use, or has illegally withheld moneys required to be held in a fiduciary capacity;~~

[~~(5) if the applicant or licensee has, with intent to deceive, materially misrepresented the terms or effect of an insurance contract, or has engaged in any fraudulent transactions; or~~

[~~(6) if the applicant or licensee is convicted, by final judgment, of a felony.~~

[~~(b) An applicant or licensee whose license application or license has been denied, refused, or revoked under this section may not apply for any license as an insurance agent or adjuster before the first anniversary of the effective date of the denial, refusal, or revocation, or, if the applicant or licensee seeks judicial review of the denial, refusal, or revocation, before the first anniversary of the date of the final court order or decree affirming that action. The commissioner may deny an application timely filed if the applicant does not show good cause why the denial, refusal, or revocation of the previous license application or license should not be considered a bar to the issuance of a new license. This subsection does not apply to an applicant whose license application was denied for failure to pass a required written examination~~].

Sec. 23. DUPLICATE LICENSE; FEE. The department [~~Commissioner of Insurance~~] shall collect in advance from an adjuster [~~adjusters~~] requesting a duplicate license [~~licenses~~] a fee in an amount determined by the department [~~not to exceed $20. The State Board of Insurance shall determine the amount of the fee~~].

Sec. 24. RULES. The commissioner may adopt rules necessary to implement this Act and to meet the minimum requirements of federal law and regulations.

ARTICLE 4. AGRICULTURE AGENTS

SECTION 4.01. Article 21.14-2, Insurance Code, is amended to read as follows:

Art. 21.14-2. [~~LICENSING OF~~] AGRICULTURAL INSURANCE AGENTS

Sec. 1. APPOINTING CERTAIN AGRICULTURAL INSURANCE AGENTS. An insurance company that holds a valid certificate of authority issued by this state to authorize the company to engage in the insurance business in this state, and whose

authority in this state and in each other jurisdiction in which the company is licensed to do business is limited [~~but limiting the insurance business only~~] to the transaction of the business of insurance of risks on growing crops, may appoint and act through agents who hold [~~qualify for~~] a license under Article 21.14 of this code, subject to this article.

Sec. 2. REQUIREMENTS FOR APPOINTMENT. (a) To appoint a license holder [~~obtain a license~~] to act as an agent under this article, an insurance company [~~applicant~~] must submit a completed appointment form [~~written application~~] to the department [~~commissioner of insurance on a form prescribed by the State Board of Insurance~~] and pay a [~~$50~~] nonrefundable fee in an amount determined by the commissioner. The appointment form [~~application~~] must bear an endorsement signed by a representative [~~an agent~~] of an insurance company that meets the requirements of Section 1 of this article [~~and must state that the applicant is a resident of this state~~].

(b) The commissioner of insurance shall approve the appointment [~~license application~~] unless the commissioner determines that the applicant does not meet the requirements of this subchapter [~~article~~].

(c) The department may waive any examination requirement imposed under this subchapter for a license applicant seeking a company appointment under this article if the applicant has successfully completed an examination as required under the Federal Crop Insurance Corporation guidelines for delivery of the federal crop insurance program. [~~Except as provided by a staggered renewal system adopted under Article 21.01-2 of this code, a license issued under this article expires two years after the date of its issuance unless a completed application to renew the license is filed with the commissioner and the $50 nonrefundable renewal fee is paid on or before that date, in which case the license continues in full force and effect until renewed or the renewal is denied.~~]

(d) The department may, at its discretion, accept continuing education hours completed under the guidelines of the Federal Crop Insurance Corporation as satisfying the continuing education requirements imposed under this subchapter. [~~An applicant for an original or renewal license is not required to pass an examination or meet any basic or continuing educational requirements to obtain or renew a license under this article.~~]

Sec. 3. MULTIPLE APPOINTMENTS AUTHORIZED. A license holder appointed under this article may act as an agent for more than one insurance company, but may act as an agent under this article only with respect to the business of insurance on growing crops. [~~The license of an agent is automatically suspended or canceled if the agent does not have outstanding a valid appointment to act as an agent for an insurance company described in Section 1 of this article. The department may discipline a licensee or deny an application under Section 5, Article 21.01-2, of this code if it determines that the license applicant or licensee:~~

[~~(1) has intentionally or knowingly violated the insurance laws of this state;~~

[~~(2) has obtained or attempted to obtain a license by fraud or misrepresentation;~~

[~~(3) has misappropriated, converted, or illegally withheld money belonging to an insurer or an insured or beneficiary;~~

[~~(4) has been guilty of fraudulent or dishonest acts;~~

[~~(5) has materially misrepresented the terms and conditions of an insurance policy or contract;~~

[~~(6) has made or issued or caused to be made or issued any statement misrepresenting or making incomplete comparisons regarding the terms or conditions of an insurance contract legally issued by an insurance carrier for the purpose of inducing or attempting to induce the owner of the contract to forfeit or surrender the contract or allow the contract to expire or for the purpose of replacing the contract with another contract;~~

[~~(7) has been convicted of a felony; or~~

[~~(8) is guilty of rebating an insurance premium or discriminating between insureds.~~]

Sec. 4. APPLICATION OF OTHER LAW. This subchapter applies [~~Article 21.14 of this code does not apply~~] to the licensing and [~~or~~] regulation of an agent appointed under this article.

Sec. 5. RULES. The commissioner may adopt rules necessary to implement this article and to meet the minimum requirements of federal law and regulations.

ARTICLE 5. LICENSING REQUIREMENT FOR AUTOMOBILE CLUBS

SECTION 5.01. Subchapter F, Chapter 21, Insurance Code, is amended by adding Article 21.80 to read as follows:

Art. 21.80. LICENSING REQUIREMENTS FOR AUTOMOBILE CLUBS. (a) An automobile club as defined in Section 722.002(2), Transportation Code, may provide insurance service only as provided by this section.

(b) An automobile club may provide a member accidental injury and death benefit insurance coverage through purchase of a group policy of insurance issued to the automobile club for the benefit of its members. The coverage must be purchased from an insurance company authorized to sell that type of coverage in this state. The automobile club shall provide each member covered by the insurance a certificate of participation. The certificate of participation must state on its face in at least 14-point black boldfaced type that the certificate is only a certificate of participation in a group accidental injury and death policy and is not motor vehicle liability insurance coverage.

(c) An automobile club may endorse insurance products and refer members to agents or insurers authorized to provide the insurance products in this state. The automobile club or an agent of the automobile club may not receive remuneration for the referral.

(d) Except as provided by Subsection (e) of this article, an automobile club performing services permitted by this article is not subject to regulation under the insurance laws of this state because of the performance of those services.

(e) An automobile club may sell insurance products to a member for a consideration separate from the amount that the member pays for membership in the automobile club if the automobile club is properly licensed as an agent under the applicable provisions of this code.

(f) In addition to reimbursement services enumerated in Section 722.002(2), Transportation Code, an automobile club may contract with a member to reimburse the member for expenses the member incurs for towing, emergency road service, and

lockout or lost key service, and to provide immediate destination assistance and trip interruption service. The insurance laws of this state do not apply to reimbursement provided under this subsection.

SECTION 5.02. Section 722.013, Transportation Code, is repealed.

ARTICLE 6. REPEALER

SECTION 6.01. The following laws are repealed:

(1) Section 21, Article 21.07, Insurance Code, as added by Chapter 820, Acts of the 75th Legislature, Regular Session, 1997;

(2) Section 21, Article 21.07, Insurance Code, as added by Chapter 1196, Acts of the 75th Legislature, Regular Session, 1997; and

(3) Sections 18 and 19, Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code).

ARTICLE 7. GRANDFATHER PROVISIONS; EFFECTIVE DATE; EMERGENCY

SECTION 7.01. This Act takes effect September 1, 1999.

SECTION 7.02. (a) Not later than January 1, 2000, the Texas Department of Insurance shall issue an appropriate license under Article 21.09, Insurance Code, as added by this Act, to a person who, immediately before the effective date of this Act, holds an agent license issued by the Texas Department of Insurance under Section 21, Article 21.07, Insurance Code, as added by Chapter 820, Acts of the 75th Legislature, Regular Session, 1997, or Section 21, Article 21.07, Insurance Code, as added by Chapter 1196, Acts of the 75th Legislature, Regular Session, 1997. On issuance of the new license, the license holder is subject to Article 21.09, Insurance Code, as added by this Act.

(b) A travel agency or franchisee is not required to be licensed as provided by Section 4, Article 21.09, Insurance Code, as added by this Act, before January 1, 2000.

(c) A self-service storage facility or franchisee is not required to be licensed under Section 5, Article 21.09, Insurance Code, as added by this Act, before January 1, 2000.

(d) A person required to be licensed under Article 21.07-2, Insurance Code, as redesignated and amended by this Act, who was not required to be licensed under Chapter 29, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-2, Vernon's Texas Insurance Code), as it existed immediately before the effective date of this Act, is not required to be licensed as provided by this Act before January 1, 2000.

(e) A person who holds a license to operate as an agricultural insurance agent under Article 21.14-2, Insurance Code, on the effective date of this Act is eligible for a license under Article 21.14, Insurance Code, if the person applies for the license to the Texas Department of Insurance before March 1, 2000, and pays any required fees. To maintain the license, the person must pass the required qualifying examination for that license on or before March 1, 2002.

SECTION 7.03. 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 143**

Senator West submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 143** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

| | |
|---|---|
| WEST | THOMPSON |
| MONCRIEF | NAISHTAT |
| CAIN | CHAVEZ |
| ELLIS | JUNELL |
| 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 400**

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 400** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

| | |
|---|---|
| ELLIS | THOMPSON |
| BROWN | HINOJOSA |
| HARRIS | JIM SOLIS |
| WENTWORTH | HAGGERTY |
| ZAFFIRINI | URESTI |
| 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 441

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 441** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

| | |
|---|---|
| ELLIS | MCCALL |
| DUNCAN | Y. DAVIS |
| RATLIFF | SADLER |
| FRASER | OLIVEIRA |
| SIBLEY | HEFLIN |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to tax exemptions and credits.

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), 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 service" and "information service."

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;

(12) data processing services;

(13) real property repair and remodeling;

(14) security services; [~~and~~]

(15) telephone answering services<u>; and</u>

<u>(16) Internet access service</u>.

SECTION 3. 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<u>; or</u>

<u>(3) Internet access service</u>.

SECTION 4. 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 5. 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.

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

(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 151.326 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. 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. There is exempted from the taxes imposed by this chapter 20 percent of the value of information services and data processing services.

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, 335, 363, 377, 383, or 384, Local Government Code;

(3) Chapter 451, 452, 453, or 457, Transportation Code;

(4) the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes);

(5) Section 13A, Chapter 35, Acts of the 59th Legislature, Regular Session, 1965, as added by Chapter 66, Acts of the 71st Legislature, Regular Session, 1989;

(6) Chapter 598, Acts of the 71st Legislature, Regular Session, 1989;

(7) Chapter 1316, Acts of the 75th Legislature, Regular Session, 1997; or

(8) Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993.

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. Section 171.002(d), Tax Code, is amended to read as follows:

(d) A [~~If the amount of tax computed for a corporation is less than $100, the~~] corporation is not required to pay any tax [~~that amount~~] and is not considered to owe any tax for a [~~that~~] period if:

(1) the amount of tax computed for the corporation is less than $100; or

(2) the amount of the corporation's gross receipts:

(A) from its entire business under Section 171.105 is less than $150,000; and

(B) from its entire business under Section 171.1051, including the amount excepted under Section 171.1051(a), is less than $150,000.

SECTION 11. Section 171.203(a), Tax Code, is amended to read as follows:

(a) A corporation on which the franchise tax is imposed, regardless of whether the corporation is required to pay any tax, shall file a report with the comptroller containing:

(1) the name of each corporation in which the corporation filing the report owns a 10 percent or greater interest and the percentage owned by the corporation;

(2) the name of each corporation that owns a 10 percent or greater interest in the corporation filing the report;

(3) the name, title, and mailing address of each person who is an officer or director of the corporation on the date the report is filed and the expiration date of each person's term as an officer or director, if any;

(4) the name and address of the agent of the corporation designated under Section 171.354 of this code; and

(5) the address of the corporation's principal office and principal place of business.

SECTION 12. Section 171.204, Tax Code, is amended to read as follows:

Sec. 171.204. INFORMATION REPORT. (a) Except as provided by Subsection (b), to [~~To~~] determine eligibility for the exemption provided by Section 171.2022, or to determine the amount of the franchise tax or the correctness of a franchise tax report, the comptroller may require an officer of a corporation that may be subject to the tax imposed under this chapter to file an information report with the comptroller stating the amount of the corporation's taxable capital and earned surplus, or any other information the comptroller may request.

(b) The comptroller may require an officer of a corporation that does not owe any tax because of the application of Section 171.002(d)(2) to file an abbreviated information report with the comptroller stating the amount of the corporation's gross receipts from its entire business. The comptroller may not require a corporation described by this subsection to file an information report that requires the corporation to report or compute its earned surplus or taxable capital.

SECTION 13. Chapter 171, Tax Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. TAX CREDIT FOR ESTABLISHING DAY-CARE CENTER OR PURCHASING CHILD-CARE SERVICES

Sec. 171.701. DEFINITIONS. In this subchapter:

(1) "Day-care center" has the meaning assigned by Section 42.002, Human Resources Code.

(2) "Family home" has the meaning assigned by Section 42.002, Human Resources Code.

Sec. 171.702. CREDIT. A corporation that meets the eligibility requirements under this subchapter is entitled to a credit in the amount allowed by this subchapter against the tax imposed under this chapter.

Sec. 171.703. CREDIT FOR DAY-CARE CENTER AND PURCHASED CHILD CARE. (a) A corporation may claim a credit under this subchapter only for a qualifying expenditure relating to:

(1) the establishment and operation of a day-care center primarily to provide care for the children of employees of the corporation or of the corporation and one or more other entities sharing the costs of establishing and operating the center; or

(2) the purchase of child-care services that are actually provided to children of employees of the corporation at a:

(A) day-care center; or

(B) family home that is registered or listed with the Department of Protective and Regulatory Services under Chapter 42, Human Resources Code.

(b) A qualifying expenditure includes an expenditure for:

(1) planning the day-care center;

(2) preparing a site to be used for the day-care center;

(3) constructing the day-care center;

(4) renovating or remodeling a structure to be used for the day-care center;

(5) purchasing equipment necessary in the use of the day-care center and installed for permanent use in or immediately adjacent to the day-care center, including kitchen appliances and other food preparation equipment;

(6) expanding the day-care center;

(7) maintaining and operating the day-care center, including paying direct administration and staff costs; or

(8) purchasing all or part of child-care services that are actually provided to children of employees of the corporation at a day-care center or registered or listed family home.

(c) The amount of the credit is equal to the lesser of:

(1) $50,000;

(2) 50 percent of the corporation's qualifying expenditures; or

(3) the amount of the limitation provided by Section 171.705(b).

(d) If a corporation shares in the cost of establishing and operating a day-care center, the corporation is entitled to a credit for the qualifying expenditures made by that corporation, subject to the limitation prescribed by Subsection (c).

Sec. 171.704. APPLICATION FOR CREDIT. (a) A corporation must apply for a credit under this subchapter on or with the tax report for the period for which the credit is claimed.

(b) If the corporation is claiming a credit for a qualifying expenditure for purchasing child-care services, the corporation must maintain proof that the services were actually provided to children of employees of the corporation at a day-care center or registered or listed family home.

(c) The comptroller shall adopt a form for the application for the credit. A corporation must use this form in applying for the credit.

Sec. 171.705. PERIOD FOR WHICH CREDIT MAY BE CLAIMED. (a) A corporation may claim a credit under this subchapter for qualifying expenditures made during an accounting period only against the tax owed for the corresponding reporting period.

(b) A corporation may not claim a credit in an amount that exceeds 90 percent of the amount of tax due for the report.

Sec. 171.706. ASSIGNMENT PROHIBITED. A corporation may not convey, assign, or transfer the credit allowed under this subchapter to another entity unless all of the assets of the corporation are conveyed, assigned, or transferred in the same transaction.

Sec. 171.707. BIENNIAL REPORT BY COMPTROLLER. (a) Before the beginning of each regular session of the legislature, the comptroller shall submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report that states:

(1) the total amount of qualifying expenditures incurred by corporations that claim a credit under this subchapter;

(2) the total amount of credits applied against the tax under this chapter and the amount of unused credits including:

(A) the total amount of franchise tax due by corporations claiming a credit under this subchapter before and after the application of the credit;

(B) the average percentage reduction in franchise tax due by corporations claiming a credit under this subchapter;

(C) the percentage of tax credits that were awarded to corporations with fewer than 100 employees; and

(D) the two-digit standard industrial classification of corporations claiming a credit under this subchapter;

(3) the geographical distribution of qualifying expenditures giving rise to a credit authorized by this subchapter;

(4) the impact of the credit provided by this subchapter on promoting economic development in this state; and

(5) the impact of the credit provided under this subchapter on state tax revenues.

(b) The final report issued prior to the expiration of this subchapter shall include historical information on the credit authorized under this subchapter.

(c) The comptroller may not include in the report information that is confidential by law.

(d) For purposes of this section, the comptroller may require a corporation that claims a credit under this subchapter to submit information, on a form provided by the comptroller, on the location of the corporation's qualifying expenditures and any other information necessary to complete the report required under this section.

SECTION 14. Chapter 171, Tax Code, is amended by adding Subchapter O to read as follows:

SUBCHAPTER O. TAX CREDIT FOR CERTAIN RESEARCH AND DEVELOPMENT ACTIVITIES

Sec. 171.721. DEFINITIONS. In this subchapter:

(1) "Base amount," "basic research payment," and "qualified research expense" have the meanings assigned those terms by Section 41, Internal Revenue Code, except that all such payments and expenses must be for research conducted within this state.

(2) "Strategic investment area" means an area that is determined by the comptroller under Section 171.726 that is:

(A) a county within this state with above state average unemployment and below state average per capita income; or

(B) an area within this state that is a federally designated urban enterprise community or an urban enhanced enterprise community.

Sec. 171.722. ELIGIBILITY. (a) A corporation is eligible for a credit against the tax imposed under this chapter in the amount and under the conditions and limitations provided by this subchapter.

(b) A corporation may claim a credit under Section 171.723(d) or take a carryforward credit without regard to whether the strategic investment area in which it made qualified research expenses and basic research payments subsequently loses its designation as a strategic investment area.

Sec. 171.723. CALCULATION OF CREDIT. (a) The credit for any report equals five percent of the sum of:

(1) the excess of qualified research expenses incurred in this state during the period upon which the tax is based over the base amount for this state; and

(2) the basic research payments determined under Section 41(e)(1)(A), Internal Revenue Code, for this state during the period upon which the tax is based.

(b) A corporation may elect to compute the credit for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in Section 41(c)(4), Internal Revenue Code, only if for the corresponding federal tax period:

(1) a federal election was made to compute the federal credit under Section 41(c)(4), Internal Revenue Code;

(2) the corporation was a member of a consolidated group for which a federal election was made under Section 41(c)(4), Internal Revenue Code; or

(3) the corporation did not claim the federal credit under Section 41(a)(1), Internal Revenue Code.

(c) For purposes of the alternate credit computation method in Subsection (b), the credit percentages applicable to qualified research expenses described in Sections 41(c)(4)(A)(i), (ii), and (iii), Internal Revenue Code, are 0.41 percent, 0.55 percent, and 0.69 percent, respectively.

(d) In computing the credit under this section, a corporation may multiply by two the amount of any qualified research expenses and basic research payments made in a strategic investment area.

(e) The burden of establishing entitlement to and the value of the credit is on the corporation.

(f) For the purposes of this section, "gross receipts" as used in Section 41, Internal Revenue Code, means gross receipts as determined under Section 171.1032.

Sec. 171.724. LIMITATIONS. (a) The total credit claimed under this subchapter for a report, including the amount of any carryforward credit under Section 171.725, may not exceed 50 percent of the amount of franchise tax due for the report before any other applicable tax credits.

(b) The total credit claimed under this subchapter and Subchapters P and Q for a report, including the amount of any carryforward credits, may not exceed the amount of franchise tax due for the report after any other applicable credits.

(c) A corporation that establishes its eligibility for a credit under this subchapter is not eligible to establish a credit under Subchapter P.

Sec. 171.725. CARRYFORWARD. If a corporation is eligible for a credit that exceeds the limitation under Section 171.724(a) or (b), the corporation may carry the unused credit forward for not more than 20 consecutive reports. A credit carryforward from a previous report is considered to be utilized before the current year credit.

Sec. 171.726. DETERMINATION OF STRATEGIC INVESTMENT AREAS. (a) Not later than September 1 each year, the comptroller shall determine areas that qualify as strategic investment areas using the most recently completed full calendar year data available on that date and, not later than October 1, shall publish a list and map of the designated areas.

(b) The designation is effective for the following calendar year for purposes of credits available under this subchapter.

Sec. 171.727. BIENNIAL REPORT BY COMPTROLLER. (a) Before the beginning of each regular session of the legislature, the comptroller shall submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report that states:

(1) the total amount of expenses and payments incurred by corporations that claim a credit under this subchapter;

(2) the total amount of credits applied against the tax under this chapter and the amount of unused credits including:

(A) the total amount of franchise tax due by corporations claiming a credit under this subchapter before and after the application of the credit;

(B) the average percentage reduction in franchise tax due by corporations claiming a credit under this subchapter;

(C) the percentage of tax credits that were awarded to corporations with fewer than 100 employees; and

(D) the two-digit standard industrial classification of corporations claiming a credit under this subchapter;

(3) the geographical distribution of expenses and payments giving rise to a credit authorized by this subchapter;

(4) the impact of the credit provided by this subchapter on the amount of research and development performed in this state and employment in research and development in this state; and

(5) the impact of the credit provided under this subchapter on employment, capital investment, and personal income in this state and on state tax revenues.

(b) The final report issued prior to the expiration of this subchapter shall include historical information on the credit authorized under this subchapter.

(c) The comptroller may not include in the report information that is confidential by law.

(d) For purposes of this section, the comptroller may require a corporation that claims a credit under this subchapter to submit information, on a form provided by the

comptroller, on the location of the corporation's research expenses and payments in this state and any other information necessary to complete the report required under this section.

Sec. 171.728. COMPTROLLER POWERS AND DUTIES. The comptroller shall adopt rules and forms necessary to implement this subchapter.

Sec. 171.729. EXPIRATION. (a) This subchapter expires December 31, 2009.

(b) The expiration of this subchapter does not affect the carryforward of a credit under Section 171.725 for those credits to which a corporation is eligible before the date this subchapter expires.

Sec. 171.730. TEMPORARY CREDIT RATES AND LIMITATIONS. (a) Notwithstanding any other provision of this subchapter, this section applies to a report originally due before January 1, 2002.

(b) For purposes of computing the credit under Section 171.723(a) for a report described by Subsection (a), the credit equals four percent of the sum of:

(1) the excess of qualified research expenses incurred in this state during the period upon which the tax is based over the base amount for this state; and

(2) the basic research payments determined under Section 41(e)(1)(A), Internal Revenue Code, for this state during the period upon which the tax is based.

(c) For purposes of computing the credit under Section 171.723(d) for a report described by Subsection (a), a corporation may multiply by 1.5 the amount of any qualified research expenses and basic research payments made in a strategic investment area.

(d) The total credit claimed under this subchapter for a report described by Subsection (a), including the amount of any carryforward credit under Section 171.725, may not exceed 25 percent of the amount of franchise tax due for the report before any other applicable tax credits.

(e) For purposes of the alternate credit computation method in Section 171.723(b), the credit percentages applicable to qualified research expenses described in Sections 41(c)(4)(A)(i), (ii), and (iii), Internal Revenue Code, are 0.33 percent, 0.44 percent, and 0.55 percent, respectively.

(f) This section expires January 1, 2002.

(g) The expiration of this section does not affect the carryforward of a credit under Section 171.725 for those credits to which a corporation is eligible before the date this section expires.

SECTION 15. Chapter 171, Tax Code, is amended by adding Subchapter P to read as follows:

SUBCHAPTER P. TAX CREDITS FOR CERTAIN JOB CREATION ACTIVITIES

Sec. 171.751. DEFINITIONS. In this subchapter:

(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) "Central administrative offices" means an establishment primarily engaged in performing management or support services for other establishments of the same enterprise. An enterprise consists of all establishments having more than 50 percent common direct or indirect ownership.

(3) "County average weekly wage" means the average weekly wage for all covered employment in the county as computed by the Texas Workforce Commission.

(4) "Data processing" means an establishment primarily engaged in activities described in categories 7371-7379 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

(5) "Distribution" means an establishment primarily engaged in activities described in categories 5012-5199 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

(6) "Group health benefit plan" means:

(A) a health plan provided by a health maintenance organization established under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code);

(B) a health benefit plan approved by the commissioner of insurance; or

(C) a self-funded or self-insured employee welfare benefit plan that provides health benefits and is established in accordance with the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), as amended.

(7) "Manufacturing" means an establishment primarily engaged in activities described in categories 2011-3999 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

(8) "Qualified business" means an establishment primarily engaged in agricultural processing, central administrative offices, distribution, data processing, manufacturing, research and development, or warehousing.

(9) "Qualifying job" means a new permanent full-time job that:

(A) is located in:

(i) a strategic investment area; or

(ii) a county within this state with a population of less than 50,000, if the job is created by a business primarily engaged in agricultural processing;

(B) requires at least 1,600 hours of work a year;

(C) pays at least 110 percent of the county average weekly wage for the county where the job is located;

(D) is covered by a group health benefit plan for which the business pays at least 80 percent of the premiums or other charges assessed under the plan for the employee;

(E) is not transferred from one area in this state to another area in this state; and

(F) is not created to replace a previous employee.

(10) "Research and development" means an establishment primarily engaged in activities described in category 8731 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

(11) "Strategic investment area" has the meaning assigned that term by Section 171.721.

(12) "Warehousing" means an establishment primarily engaged in activities described in categories 4221-4226 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

Sec. 171.752. ELIGIBILITY. (a) A corporation is eligible for a credit against the tax imposed under this chapter if the corporation:

(1) is a qualified business as defined in Section 171.751;

(2) creates a minimum of 10 qualifying jobs; and

(3) pays an average weekly wage, for the year in which credits are claimed, of at least 110 percent of the county average weekly wage for the county where the qualifying jobs are located.

(b) A corporation may claim a credit or take a carryforward credit without regard to whether the strategic investment area in which it created the qualifying jobs subsequently loses its designation as a strategic investment area, if applicable.

Sec. 171.753. CALCULATION OF CREDIT. A corporation may establish a credit equal to 25 percent of the total wages and salaries paid by the corporation for qualifying jobs during the period upon which the tax is based.

Sec. 171.754. LENGTH OF CREDIT. The credit established shall be claimed in five equal installments of one-fifth the credit amount over the five consecutive reports beginning with the report based upon the period during which the qualifying jobs were created.

Sec. 171.755. LIMITATIONS. (a) The total credit claimed under this subchapter for a report, including the amount of any carryforward credit under Section 171.756, may not exceed 50 percent of the amount of franchise tax due for the report before any other applicable tax credits.

(b) The total credit claimed under this subchapter and Subchapters O and Q for a report, including the amount of any carryforward credits, may not exceed the amount of franchise tax due for the report after any other applicable credits.

(c) A corporation that establishes its eligibility for a credit under this subchapter is not eligible to establish a credit under Subchapter O.

Sec. 171.756. CARRYFORWARD. (a) If a corporation is eligible for a credit from an installment that exceeds the limitations under Section 171.755(a) or (b), the corporation may carry the unused credit forward for not more than five consecutive reports.

(b) A carryforward is considered the remaining portion of an installment that cannot be claimed in the current year because of the tax limitation under Section 171.755. A carryforward is added to the next year's installment of the credit in determining the tax limitation for that year. A credit carryforward from a previous report is considered to be utilized before the current year installment.

Sec. 171.757. CERTIFICATION OF ELIGIBILITY. (a) For the initial and each succeeding report in which a credit is claimed under this subchapter, the corporation shall file with its report, on a form provided by the comptroller, information that sufficiently demonstrates that the corporation is eligible for the credit and is in compliance with Section 171.752.

(b) The burden of establishing entitlement to and the value of the credit is on the corporation.

(c) If, in one of the five years in which the installment of a credit accrues, the number of the corporation's full-time employees falls below the number of full-time employees the corporation had in the year in which the corporation qualified for the credit, the credit expires and the corporation may not take any remaining installment of the credit.

(d) Notwithstanding Subsection (c), the corporation may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under Section 171.756.

Sec. 171.758. ASSIGNMENT PROHIBITED. A corporation may not convey, assign, or transfer the credit allowed under this subchapter to another entity unless all of the assets of the corporation are conveyed, assigned, or transferred in the same transaction.

Sec. 171.759. BIENNIAL REPORT BY COMPTROLLER. (a) Before the beginning of each regular session of the legislature, the comptroller shall submit to the

governor, the lieutenant governor, and the speaker of the house of representatives a report that states:

(1) the total number of jobs created by corporations that claim a credit under this subchapter and the average and median annual wage of those jobs;

(2) the total amount of credits applied against the tax under this chapter and the amount of unused credits including:

(A) the total amount of franchise tax due by corporations claiming a credit under this subchapter before and after the application of the credit;

(B) the average percentage reduction in franchise tax due by corporations claiming a credit under this subchapter; and

(C) the percentage of tax credits that were awarded to corporations with fewer than 100 employees;

(3) a breakdown of the two-digit standard industrial classification of businesses claiming a credit under this subchapter;

(4) the geographical distribution of the credits claimed under this subchapter; and

(5) the impact of the credit provided under this subchapter on employment, personal income, and capital investment in this state and on state tax revenues.

(b) The final report issued prior to the expiration of this subchapter shall include historical information on the credit authorized under this subchapter.

(c) The comptroller may not include in the report information that is confidential by law.

(d) For purposes of this section, the comptroller may require a corporation that claims a credit under this subchapter to submit information, on a form provided by the comptroller, on the location of the corporation's job creation in this state and any other information necessary to complete the report required under this section.

(e) The comptroller shall provide notice to the members of the legislature that the report required under this section is available on request.

Sec. 171.760. COMPTROLLER POWERS AND DUTIES. The comptroller shall adopt rules and forms necessary to implement this subchapter.

Sec. 171.761. EXPIRATION. (a) This subchapter expires December 31, 2009.

(b) The expiration of this subchapter does not affect the carryforward of a credit under Section 171.756 or those credits for which a corporation is eligible before the date this subchapter expires.

SECTION 16. Chapter 171, Tax Code, is amended by adding Subchapter Q to read as follows:

SUBCHAPTER Q. TAX CREDITS FOR CERTAIN CAPITAL INVESTMENTS

Sec. 171.801. DEFINITIONS. In this subchapter:

(1) "Agricultural processing," "central administrative offices," "county average weekly wage," "data processing," "distribution," "manufacturing," "qualified business," "research and development," and "warehousing" have the meanings assigned those terms by Section 171.751.

(2) "Qualified capital investment" means tangible personal property first placed in service in a strategic investment area, or first placed in service in a county with a population of less than 50,000 by a corporation primarily engaged in agricultural processing, and that is described in Section 1245(a), Internal Revenue Code, such as engines, machinery, tools, and implements used in a trade or business or held for investment and subject to an allowance for depreciation, cost recovery under

the accelerated cost recovery system, or amortization. The term does not include real property or buildings and their structural components. Property that is leased under a capitalized lease is considered a "qualified capital investment," but property that is leased under an operating lease is not considered a "qualified capital investment." Property expensed under Section 179, Internal Revenue Code, is not considered a "qualified capital investment."

(3) "Strategic investment area" has the meaning assigned that term by Section 171.721.

Sec. 171.802. ELIGIBILITY. (a) A qualified business is eligible for a credit against the tax imposed under this chapter in the amount and under the conditions and limitations provided by this subchapter.

(b) To qualify for the credit authorized under this subchapter, a qualified business must:

(1) pay an average weekly wage, at the location with respect to which the credit is claimed, that is at least 110 percent of the county average weekly wage;

(2) offer coverage to all full-time employees at the location with respect to which the credit is claimed by a group health benefit plan, as defined by Section 171.751, for which the business pays at least 80 percent of the premiums or other charges assessed under the plan for the employees; and

(3) make a minimum $500,000 qualified capital investment.

(c) A corporation may claim a credit or take a carryforward credit without regard to whether the strategic investment area in which it made the qualified capital investment subsequently loses its designation as a strategic investment area, if applicable.

Sec. 171.803. CALCULATION OF CREDIT. A corporation may establish a credit equal to 7.5 percent of the qualified capital investment during the period upon which the tax is based.

Sec. 171.804. LENGTH OF CREDIT. The credit established shall be claimed in five equal installments of one-fifth the credit amount over the five consecutive reports beginning with the report based upon the period during which the qualified capital investment was made.

Sec. 171.805. LIMITATIONS. (a) The total credit claimed under this subchapter for a report, including the amount of any carryforward credit under Section 171.806, may not exceed 50 percent of the amount of franchise tax due for the report before any other applicable tax credits.

(b) The total credit claimed under this subchapter and Subchapters O and P for a report, including the amount of any carryforward credits, may not exceed the amount of franchise tax due for the report after any other applicable tax credits.

(c) A corporation that establishes its eligibility for a credit under this subchapter is not eligible to claim a franchise tax reduction authorized under Section 171.1015.

Sec. 171.806. CARRYFORWARD. (a) If a corporation is eligible for a credit from an installment that exceeds the limitation under Section 171.805(a) or (b), the corporation may carry the unused credit forward for not more than five consecutive reports.

(b) A carryforward is considered the remaining portion of an installment that cannot be claimed in the current year because of the tax limitation under Section 171.805. A carryforward is added to the next year's installment of the credit in determining the tax limitation for that year. A credit carryforward from a previous report is considered to be utilized before the current year installment.

Sec. 171.807. CERTIFICATION OF ELIGIBILITY. (a) For the initial and each succeeding report in which a credit is claimed under this subchapter, the corporation shall file with its report, on a form provided by the comptroller, information that sufficiently demonstrates that the corporation is eligible for the credit and is in compliance with Section 171.802.

(b) The burden of establishing entitlement to and the value of the credit is on the qualified business.

(c) A credit expires under this subchapter and the corporation may not take any remaining installment of the credit if in one of the five years in which the installment of a credit accrues, the qualified business:

(1) disposes of the qualified capital investment;

(2) takes the qualified capital investment out of service;

(3) moves the qualified capital investment out of this state; or

(4) fails to pay an average weekly wage as required by Section 171.802.

(d) Notwithstanding Subsection (c), the corporation may take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under Section 171.806.

Sec. 171.808. ASSIGNMENT PROHIBITED. A corporation may not convey, assign, or transfer the credit allowed under this subchapter to another entity unless all of the assets of the corporation are conveyed, assigned, or transferred in the same transaction.

Sec. 171.809. BIENNIAL REPORT BY COMPTROLLER. (a) Before the beginning of each regular session of the legislature, the comptroller shall submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report that states:

(1) the total amount of qualified capital investments made by corporations that claim a credit under this subchapter and the average and median wages paid by those corporations;

(2) the total amount of credits applied against the tax under this chapter and the amount of unused credits, including:

(A) the total amount of franchise tax due by corporations claiming a credit under this subchapter before and after the application of the credit;

(B) the average percentage reduction in franchise tax due by corporations claiming a credit under this subchapter;

(C) the percentage of tax credits that were awarded to corporations with fewer than 100 employees; and

(D) the two-digit standard industrial classification of corporations claiming a credit under this subchapter;

(3) the geographical distribution of the qualified capital investments on which tax credit claims are made under this subchapter; and

(4) the impact of the credit provided under this subchapter on employment, capital investment, personal income, and state tax revenues.

(b) The final report issued before the expiration of this subchapter shall include historical information on the credit authorized under this subchapter.

(c) The comptroller may not include in the report information that is confidential by law.

(d) For purposes of this section, the comptroller may require a corporation that claims a credit under this subchapter to submit information, on a form provided by the

comptroller, on the location of the corporation's capital investment in this state and any other information necessary to complete the report required under this section.

(e) The comptroller shall provide notice to the members of the legislature that the report required under this section is available on request.

Sec. 171.810. COMPTROLLER POWERS AND DUTIES. The comptroller shall adopt rules and forms necessary to implement this subchapter.

Sec. 171.811. EXPIRATION. (a) This subchapter expires December 31, 2009.

(b) The expiration of this subchapter does not affect the carryforward of a credit under Section 171.806 or those credits for which a corporation is eligible before the date this subchapter expires.

SECTION 17. Chapter 171, Tax Code, is amended by adding Subchapter R to read as follows:

SUBCHAPTER R. TAX CREDIT FOR CONTRIBUTIONS TO BEFORE AND AFTER SCHOOL PROGRAMS

Sec. 171.831. DEFINITION. In this subchapter, "school-age child care" means care provided before and after school and during the summer and holidays for children who are at least five years of age but younger than 14 years of age.

Sec. 171.832. CREDIT. A corporation that meets the eligibility requirements under this subchapter is entitled to a credit in the amount allowed by this subchapter against the tax imposed under this chapter.

Sec. 171.833. EXPENDITURES ELIGIBLE FOR CREDIT. (a) A corporation may claim a credit under this subchapter only for a qualifying expenditure relating to the operation of a school-age child care program that is operated by:

(1) a nonprofit organization licensed under Chapter 42, Human Resources Code;

(2) a nonprofit, accredited educational facility or by another nonprofit entity under contract with the educational facility, if the Texas Education Agency or Southern Association of Colleges and Schools has approved the curriculum content of the program operated under the contract; or

(3) a county or municipality, if the governing body of the county or municipality annually adopts standards of care by order or ordinance that include minimum child-to-staff ratios, staff qualifications, facility, health, and safety standards, and mechanisms for monitoring and enforcing the standards.

(b) A qualifying expenditure includes an expenditure for:

(1) constructing, renovating, or remodeling a facility or structure to be used by the program;

(2) purchasing necessary equipment, supplies, or food to be used in the program; or

(3) operating the program, including administrative and staff costs.

Sec. 171.834. AMOUNT; LIMITATIONS. (a) The amount of the credit is equal to 30 percent of a corporation's qualifying expenditures.

(b) A corporation may claim a credit under this subchapter for a qualifying expenditure during an accounting period only against the tax owed for the corresponding reporting period.

(c) A corporation may not claim a credit in an amount that exceeds 50 percent of the amount of net franchise tax due, after applying any other credits, for the reporting period.

Sec. 171.835. APPLICATION FOR CREDIT. (a) A corporation must apply for a credit under this subchapter on or with the tax report for the period for which the credit is claimed.

(b) The comptroller shall adopt a form for the application for the credit. A corporation must use this form in applying for the credit.

Sec. 171.836. ASSIGNMENT PROHIBITED. A corporation may not convey, assign, or transfer a credit allowed under this subchapter to another entity unless all of the assets of the corporation are conveyed, assigned, or transferred in the same transaction.

SECTION 18. The comptroller may combine the reports required under Subchapters N, O, P, and Q, Chapter 171, Tax Code, as added by this Act, into a single report.

SECTION 19. (a) Before the beginning of the 79th Legislature, Regular Session, the comptroller of public accounts shall report to the legislature and the governor on the effect that exempting small corporations from the franchise tax under Section 171.002, Tax Code, as amended by this Act, has had on the economy of this state, including on the creation of new jobs in this state.

(b) The report must include:

(1) an assessment of the intended purposes of the exemptions and whether the exemptions are achieving those objectives;

(2) an assessment of whether the exemptions have created any problems in the administration of the franchise tax; and

(3) a recommendation for retaining, eliminating, or amending the exemptions.

(c) The comptroller of public accounts may include the report in any other report made to the legislature.

SECTION 20. (a) Except as otherwise provided by this section, this Act takes effect October 1, 1999.

(b) The changes in law made by this Act by amending Section 151.3111(b), Tax Code, and adding Section 151.326, Tax Code, take effect on the earliest day that they may take effect under Section 39, Article III, Texas Constitution. The comptroller of public accounts may adopt emergency rules for the implementation of those provisions.

(c) The changes in law made by this Act by amending Section 151.313(a), Tax Code, take effect April 1, 2000.

(d) The changes in law made by this Act by amending Sections 171.002(d), 171.203(a), and 171.204, Tax Code, and adding Subchapters N, O, P, Q, and R, Chapter 171, Tax Code, take effect January 1, 2000, and apply only to a report originally due on or after that date.

(e) A corporation may claim a credit under Subchapters N, O, P, Q, and R, Chapter 171, Tax Code, as added by this Act, only for expenses and payments incurred, qualified investments or expenditures made, or new jobs created on or after January 1, 2000.

(f) The changes in law made by this Act do not affect taxes imposed before the effective date of those changes, and the law in effect before the effective date of those changes is continued in effect for purposes of the liability for and collection of those taxes.

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, and that this Act take effect and be in force according to its terms, and it is so enacted.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON HOUSE BILL 801**

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 801** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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|---|---|
| ARMBRISTER | UHER |
| SIBLEY | MAXEY |
| BROWN | ZBRANEK |
| 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 3014**

Senator Bernsen submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 3014** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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|---|---|
| BERNSEN | HAWLEY |
| JACKSON | ALEXANDER |
| ARMBRISTER | UHER |
| LUCIO | |
| CAIN | |
| 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 3061

Senator Bernsen submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 3061** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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|---|---|
| BERNSEN | HILL |
| MONCRIEF | ALEXANDER |
| SHAPLEIGH | HAWLEY |
| | SIEBERT |
| | NORIEGA |
| 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 3620

Senator Bernsen submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 3620** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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|---|---|
| BERNSEN | R. LEWIS |
| JACKSON | HAMRIC |
| LUCIO | COOK |
| ARMBRISTER | WALKER |
| BROWN | |
| 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 744**

Senator Bernsen submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 744** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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|---|---|
| BERNSEN | EILAND |
| JACKSON | AVERITT |
| CAIN | MARCHANT |
| ELLIS | DENNY |
| SIBLEY | SOLOMONS |
| 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 655**

Senator Madla submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 655** 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.

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|---|---|
| MADLA | URESTI |
| LUCIO | JUAN SOLIS |
| SHAPLEIGH | CHAVEZ |
| CARONA | C. JONES |
| | HUNTER |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to the creation of a defense base development authority; validating certain acts of a defense base development corporation; granting the right to issue bonds.

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

SECTION 1. Subtitle A, Title 12, Local Government Code, is amended by adding Chapter 378 to read as follows:

CHAPTER 378. DEFENSE BASE DEVELOPMENT AUTHORITIES

Sec. 378.001. DEFINITIONS. In this chapter:

(1) "Authority" means a defense base development authority established under this chapter.

(2) "Base property" means land inside the boundaries of the defense base for which the authority is established and improvements and personal property on that land.

(3) "Board" means the board of directors of the authority.

(4) "Bond" means an interest-bearing obligation issued by an authority under this chapter, including a bond, certificate, note, or other evidence of indebtedness.

(5) "Defense base" means a military installation or facility closed or realigned under the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687 note) and its subsequent amendments.

Sec. 378.002. ESTABLISHMENT; SUCCESSOR. (a) A municipality by resolution may establish an authority. The resolution must include a legal description of the base property. On adoption of the resolution, the authority is established as a special district and political subdivision of this state, with a boundary coterminous with the base property described in the resolution.

(b) When establishing an authority, the municipality may designate the authority in the municipality's resolution to be the successor in interest to a nonprofit corporation organized under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes). On adoption of the resolution, the corporation is dissolved and the authority succeeds to all rights and liabilities of that corporation.

Sec. 378.003. PURPOSE AND NATURE OF AUTHORITY. (a) An authority is created to:

(1) accept title to or operate under a lease from the United States or any other person all or a part of the base property and areas around the base property; and

(2) engage in the economic development of the base property and areas around the base property.

(b) An authority exercises public and essential governmental functions.

Sec. 378.004. POWERS AND DUTIES OF AUTHORITY. (a) An authority may exercise power necessary or convenient to carry out a purpose of this chapter, including the power to:

(1) adopt an official seal, or alter it;

(2) adopt rules;

(3) enter into a contract or incur a liability;

(4) acquire and dispose of money;

(5) select a depository;

(6) establish a system of accounts for the authority;

(7) invest funds in accordance with Chapter 2256, Government Code;

(8) set the fiscal year for the authority;

(9) adopt an annual operating budget for major expenditures before the beginning of the fiscal year;

(10) borrow money or issue a bond in an amount that does not exceed the maximum amount set by the governing body of the municipality;

(11) loan money;

(12) acquire, lease, lease-purchase, convey, grant a mortgage on, or otherwise dispose of a property right, including a right regarding base property;

(13) lease property located on the base property to a person to effect the purposes of this chapter;

(14) request and accept a donation, grant, guaranty, or loan from any source permitted by law;

(15) operate and maintain an office;

(16) charge for a facility or service; and

(17) exercise a power granted to a municipality by Chapter 380.

(b) An authority shall establish and maintain an office and agent registered with the secretary of state.

(c) An authority shall endeavor to raise revenue sufficient to pay its debts.

Sec. 378.005. SUITS; INDEMNITY. (a) An authority may sue and be sued.

(b) In a suit against an authority, process may be served on the president, vice president, or registered agent.

(c) An authority may not be required to give a bond on an appeal or writ of error taken in a civil case that the authority is prosecuting or defending.

(d) An authority may indemnify an authority employee or board member or a former authority employee or board member for necessary expenses and costs, including attorney's fees, incurred by that person in connection with a claim asserted against that person if:

(1) the claim relates to an act or omission of the person when acting in the scope of the person's board membership or authority employment; and

(2) the person has not been found liable or guilty on the claim.

Sec. 378.006. UTILITIES. (a) An authority may accept an electric, gas, potable water, or sanitary sewage utility conveyed by the United States but may not operate it.

(b) An authority shall convey a utility received under Subsection (a) to the municipality that established the authority. The municipality shall pay the authority fair market value for the utility.

(c) If state or federal law prohibits the operation or ownership of the utility by the municipality, the municipality shall convey the utility to an entity that may operate it. The municipality may charge fair market value for the conveyance.

Sec. 378.007. BOARD OF DIRECTORS. (a) The board consists of 11 members and is responsible for the management, operation, and control of the authority.

(b) The governing body of the municipality that established the authority shall appoint each board member to a term not exceeding two years. A vacancy on the board is filled in the same manner as the original appointment.

(c) The municipality may remove a board member by adopting a resolution.

(d) The members of the board shall elect from its membership a president, vice president, secretary, and treasurer. The board by rule may provide for the election of other officers.

(e) A board member serves without compensation but may be reimbursed for a reasonable and necessary expense incurred in the performance of an official duty.

(f) The board shall adopt rules for its proceedings and may employ and compensate persons to carry out the powers and duties of the authority.

Sec. 378.008. POWERS AND DUTIES OF BOARD. (a) The board shall:

(1) monitor the proposed closing of the defense base;

(2) manage and operate the defense base transition and development on behalf of the municipality that established the authority;

(3) review options related to the most appropriate use of the defense base;

(4) conduct a study on issues related to the closure, conversion, redevelopment, and future use of the defense base;

(5) formulate, adopt, and implement a plan to convert and redevelop the defense base; and

(6) submit the plan to an appropriate agency or agencies of the federal government.

(b) For the base property and areas adjacent to the base property the board shall:

(1) promote economic development;

(2) attempt to reduce unemployment;

(3) encourage the development of new industry by private businesses; and

(4) encourage financing of projects designated under Section 378.009.

Sec. 378.009. REDEVELOPMENT PROJECTS. (a) The board may designate as a redevelopment project a project that relates to:

(1) the development of base property and the surrounding areas; or

(2) the development of a defense base in the territory of the municipality that established the authority and areas surrounding that base.

(b) A project designated under Subsection (a) is for a public purpose.

Sec. 378.010. BONDS. (a) An authority may issue bonds only if the municipality that established the authority authorizes the issuance by resolution.

(b) A bond issued under this chapter must:

(1) be payable solely from authority revenue;

(2) mature not later than 40 years after its date of issuance; and

(3) state on its face that it is not an obligation of this state or the municipality.

Sec. 378.011. TAX EXEMPTIONS. (a) An authority's property, income, and operations are exempt from taxes imposed by the state or a political subdivision of the state.

(b) Section 25.07(a), Tax Code, applies to a leasehold or other possessory interest in real property granted by an authority for a project designated under Section 378.009(a) in the same manner as it applies to a leasehold or other possessory interest in real property constituting a project described by Section 4B(k), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes).

Sec. 378.012. DISSOLUTION. The governing body of a municipality that established the authority by resolution may dissolve the authority after all debts or obligations of the authority have been satisfied. Property of the authority that remains after dissolution is conveyed to the municipality.

SECTION 2. (a) For purposes of this section, a "defense base development corporation" means a corporation established under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) for the purpose of promoting projects regarding a military base closure or realignment under the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687 note) and its subsequent amendments.

(b) Each of the following acts of a defense base development corporation is validated and confirmed as of the date it occurred:

(1) each act or proceeding of the corporation taken before March 1, 1999;

(2) the election or appointment and each act of a director or other official of the corporation who took office before the effective date of this Act;

(3) each act or proceeding relating to a bond or other obligation of the corporation authorized before the effective date of this Act; and

(4) each act or proceeding relating to the entity's incorporation under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes).

(c) This section does not apply to:

(1) an act, proceeding, bond, or obligation the validity of which is the subject of litigation that is pending on the effective date of this Act;

(2) an election or appointment of a director or official the validity of which is the subject of litigation that is pending on the effective date of this Act;

(3) an act or proceeding that was void or that, under a statute of this state at the time the action or proceeding occurred, was a misdemeanor or felony; or

(4) an act or proceeding that has been held invalid by a final judgment of a court.

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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON SENATE BILL 528**

Senator West submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 528** 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.

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|---|---|
| WEST | GIDDINGS |
| DUNCAN | DUTTON |
| GALLEGOS | GARCIA |
| SHAPIRO | HAGGERTY |
| WHITMIRE | HINOJOSA |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to the civil and criminal consequences of certain actions of a minor involving the acquisition, possession, or use of alcohol; providing penalties.

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

SECTION 1. Subsection (d), Section 106.04, Alcoholic Beverage Code, is amended to read as follows:

(d) A minor who commits an offense under this section and who has been previously convicted twice or more of offenses under this section is not eligible for deferred disposition [~~adjudication~~]. For the purposes of this subsection:

(1) an adjudication under Title 3, Family Code, that the minor engaged in conduct described by this section is considered a conviction of an offense under this section; and

(2) an order of deferred disposition [~~adjudication~~] for an offense alleged under this section is considered a conviction of an offense under this section.

SECTION 2. Subsections (f) and (h), Section 106.041, Alcoholic Beverage Code, are amended to read as follows:

(f) A minor who commits an offense under this section and who has been previously convicted twice or more of offenses under this section is not eligible for deferred disposition [~~adjudication~~].

(h) For the purpose of determining whether a minor has been previously convicted of an offense under this section:

(1) an adjudication under Title 3, Family Code, that the minor engaged in conduct described by this section is considered a conviction under this section; and

(2) an order of deferred disposition [~~adjudication~~] for an offense alleged under this section is considered a conviction of an offense under this section.

SECTION 3. Section 106.071, Alcoholic Beverage Code, is amended by amending Subsections (d) and (f) and adding Subsections (h) and (i) to read as follows:

(d) In addition to any fine and any order issued under Section 106.115:

(1) the court shall order a minor placed on deferred disposition for or convicted of an offense to which this section applies to perform community service for:

(A) not less than eight or more than 12 hours, if the minor has not been previously convicted of an offense to which this section applies; or

(B) not less than 20 or more than 40 hours, if the minor has been previously convicted once of an offense to which this section applies; and

(2) the court shall order the Department of Public Safety to suspend the [~~minor's~~] driver's license or permit of a minor convicted of an offense to which this section applies or, if the minor does not have a driver's license or permit, to deny the issuance of a driver's license or permit for:

(A) 30 days, if the minor has not been previously convicted of an offense to which this section applies;

(B) 60 days, if the minor has been previously convicted once of an offense to which this section applies; or

(C) 180 days, if the minor has been previously convicted twice or more of an offense to which this section applies.

(f) For the purpose of determining whether a minor has been previously convicted of an offense to which this section applies:

(1) an adjudication under Title 3, Family Code, that the minor engaged in

conduct described by this section is considered a conviction under this section; and

(2) an order of deferred disposition [~~adjudication~~] for an offense alleged under this section is considered a conviction of an offense under this section.

(h) A driver's license suspension under this section takes effect on the 11th day after the date the minor is convicted.

(i) A defendant who is not a child and who has been previously convicted at least twice of an offense to which this section applies is not eligible to receive a deferral of final disposition of a subsequent offense.

SECTION 4. Subsection (a), Section 106.115, Alcoholic Beverage Code, is amended to read as follows:

(a) On the placement of a minor on deferred disposition for an offense under Section 49.02, Penal Code, or under Section 106.02, 106.025, 106.04, 106.041, 106.05, or 106.07, the court shall require the defendant to attend an alcohol awareness program approved by the Texas Commission on Alcohol and Drug Abuse. On conviction of a minor of an offense under one or more of those sections, [~~Section 106.02, 106.025, 106.04, 106.041, 106.05, or 106.07~~] the court, in addition to assessing a fine as provided by those sections, shall require a defendant who has not been previously convicted of an offense under one of those sections to attend the [~~an~~] alcohol awareness program [~~approved by the Texas Commission on Alcohol and Drug Abuse~~]. If the defendant has been previously convicted once or more of an offense under one or more of those sections, the court may require the defendant to attend the alcohol awareness program [~~course~~]. If the defendant is younger than 18 years of age, the court may require the parent or guardian of the defendant to attend the program with the defendant. The Texas Commission on Alcohol and Drug Abuse:

(1) is responsible for the administration of the certification of approved alcohol awareness programs;

(2) may charge a nonrefundable application fee for:

(A) initial certification of the approval; or

(B) renewal of the certification;

(3) shall adopt rules regarding alcohol awareness programs approved under this section; and

(4) shall monitor, coordinate, and provide training to a person who provides an alcohol awareness program.

SECTION 5. Subsection (a), Section 106.117, Alcoholic Beverage Code, is amended to read as follows:

(a) Each court, including a justice court, municipal court, or juvenile court, shall furnish to the Department of Public Safety a notice of each:

(1) adjudication under Title 3, Family Code, for conduct that constitutes an offense under this chapter;

(2) conviction of an offense under this chapter;

(3) order of deferred disposition [~~adjudication~~] for an offense alleged under this chapter; and

(4) acquittal of an offense under Section 106.041.

SECTION 6. Subsection (a), Section 521.457, Transportation Code, is amended to read as follows:

(a) A person commits an offense if the person operates a motor vehicle on a highway:

(1) after the person's driver's license has been canceled under this chapter if the person does not have a license that was subsequently issued under this chapter;

(2) during a period that the person's driver's license or privilege is suspended or revoked under:

(A) this chapter;

(B) Chapter 524;

(C) Chapter 724; [~~or~~]

(D) Section 106.071, Alcoholic Beverage Code; or

(E) Article 42.12, Code of Criminal Procedure;

(3) while the person's driver's license is expired if the license expired during a period of suspension imposed under:

(A) this chapter;

(B) Chapter 524;

(C) Chapter 724; [~~or~~]

(D) Section 106.071, Alcoholic Beverage Code; or

(E) Article 42.12, Code of Criminal Procedure; or

(4) after renewal of the person's driver's license has been denied under Chapter 706, if the person does not have a driver's license subsequently issued under this chapter.

SECTION 7. This Act takes effect September 1, 1999.

SECTION 8. 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 8**

Senator West submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 8** 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.

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|---|---|
| WEST | GOODMAN |
| GALLEGOS | TRUITT |
| BROWN | A. REYNA |
| HARRIS | |
| DUNCAN | |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to the compilation of criminal information pertaining to criminal street gangs and criminal combinations.

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

SECTION 1. The heading of Chapter 61, Code of Criminal Procedure, is amended to read as follows:

CHAPTER 61. COMPILATION OF INFORMATION PERTAINING TO [~~A~~] CRIMINAL COMBINATIONS AND CRIMINAL STREET GANGS [~~COMBINATION~~]

SECTION 2. Article 61.01, Code of Criminal Procedure, is amended by amending Subdivision (1) and adding Subdivisions (7), (8), and (9) to read as follows:

(1) "Combination" and "criminal street gang" have [~~has~~] the meanings [~~meaning~~] assigned by Section 71.01, Penal Code.

(7) "Department" means the Department of Public Safety of the State of Texas.

(8) "Intelligence database" means a collection or compilation of data organized for search and retrieval to evaluate, analyze, disseminate, or use intelligence information relating to a criminal combination or a criminal street gang for the purpose of investigating or prosecuting criminal offenses.

(9) "Law enforcement agency" does not include the Texas Department of Criminal Justice or the Texas Youth Commission.

SECTION 3. Article 61.02, Code of Criminal Procedure, is amended to read as follows:

Art. 61.02. CRIMINAL COMBINATION AND CRIMINAL STREET GANG INTELLIGENCE DATABASE; SUBMISSION CRITERIA [~~INFORMATION SYSTEM~~]. (a) Subject to Subsection (b), a [~~A~~] criminal justice agency may compile criminal information into an intelligence database [~~a system~~] for the purpose of investigating or prosecuting the criminal activities of criminal combinations or criminal street gangs. The information may be compiled on paper, by computer, or in any other useful manner.

(b) A law enforcement agency may compile and maintain criminal information relating to a criminal street gang as provided by Subsection (a) in a local or regional intelligence database only if the agency compiles and maintains the information in accordance with the criminal intelligence systems operating policies established under 28 C.F.R. Section 23.1 et seq. and the submission criteria established under Subsection (c).

(c) Criminal information collected under this chapter relating to a criminal street gang must:

(1) be relevant to the identification of an organization that is reasonably suspected of involvement in criminal activity; and

(2) consist of any two of the following:

(A) a self-admission by the individual of criminal street gang membership;

(B) an identification of the individual as a criminal street gang member by a reliable informant or other individual;

(C) a corroborated identification of the individual as a criminal street gang member by an informant or other individual of unknown reliability;

(D) evidence that the individual frequents a documented area of a criminal street gang, associates with known criminal street gang members, and uses criminal street gang dress, hand signals, tattoos, or symbols; or

(E) evidence that the individual has been arrested or taken into custody with known criminal street gang members for an offense or conduct consistent with criminal street gang activity.

SECTION 4. Article 61.03, Code of Criminal Procedure, is amended by amending Subsections (c) and (d) and adding Subsection (e) to read as follows:

(c) If a [~~A~~] local law enforcement [~~criminal justice~~] agency compiles and maintains information under this chapter relating to a criminal street gang, the agency shall [~~may not~~] send the information [~~collected under this chapter~~] to the department [~~a statewide database~~].

(d) The department shall establish an intelligence database and shall maintain information received from an agency under Subsection (c) in the database in accordance with the policies established under 28 C.F.R. Section 23.1 et seq. and the submission criteria under Article 61.02(c) [~~A local criminal justice agency may send information collected under this chapter to a regional database~~].

(e) The department shall designate a code to distinguish criminal information contained in the intelligence database relating to a child from criminal information contained in the database relating to an adult offender.

SECTION 5. Article 61.04, Code of Criminal Procedure, is amended by amending Subsection (a) and by adding Subsection (d) to read as follows:

(a) Notwithstanding Chapter 58, Family Code, criminal information relating to a child associated with a combination or a criminal street gang may be compiled and released under this chapter regardless of the age of the child.

(d) If a local law enforcement agency collects criminal information under this chapter relating to a criminal street gang, the governing body of the county or municipality served by the law enforcement agency may adopt a policy to notify the parent or guardian of a child of the agency's observations relating to the child's association with a criminal street gang.

SECTION 6. Article 61.06, Code of Criminal Procedure, is amended to read as follows:

Art. 61.06. REMOVAL [~~DESTRUCTION~~] OF RECORDS RELATING TO AN INDIVIDUAL OTHER THAN A CHILD. (a) This article does not apply to information collected under this chapter by the Texas Department of Criminal Justice or the Texas Youth Commission.

(b) Subject to [~~Except as provided by~~] Subsection (c) [~~(b)~~], information collected under this chapter relating to a criminal street gang must be removed from an intelligence database established under Article 61.02 and the intelligence database maintained by the department under Article 61.03 [~~destroyed~~] after three [~~two~~] years if:

(1) the information relates to the investigation or prosecution of criminal activity engaged in by an individual other than a child; and

(2) the individual who is the subject of the information has not been arrested for [~~charged with~~] criminal activity reported to the department under Chapter 60.

(c) In determining whether information is required to be removed from an intelligence database under Subsection (b), the three-year period does not include any period during which the individual who is the subject of the information is confined in the institutional division or the state jail division of the Texas Department of Criminal

Justice [~~(b) The information destruction requirements of Subsection (a) are suspended until September 1, 1999~~].

SECTION 7. Chapter 61, Code of Criminal Procedure, is amended by adding Articles 61.07, 61.08, and 61.09 to read as follows:

Art. 61.07. REMOVAL OF RECORDS RELATING TO A CHILD. (a) This article does not apply to information collected under this chapter by the Texas Department of Criminal Justice or the Texas Youth Commission.

(b) Subject to Subsection (c), information collected under this chapter relating to a criminal street gang must be removed from an intelligence database established under Article 61.02 and the intelligence database maintained by the department under Article 61.03 after two years if:

(1) the information relates to the investigation or prosecution of criminal activity engaged in by a child; and

(2) the child who is the subject of the information has not been:

(A) arrested for criminal activity reported to the department under Chapter 60; or

(B) taken into custody for delinquent conduct reported to the department under Chapter 58, Family Code.

(c) In determining whether information is required to be removed from an intelligence database under Subsection (b), the two-year period does not include any period during which the child who is the subject of the information is:

(1) committed to the Texas Youth Commission for conduct that violates a penal law of the grade of felony; or

(2) confined in the institutional division or the state jail division of the Texas Department of Criminal Justice.

Art. 61.08. RIGHT TO REQUEST REVIEW OF CRIMINAL INFORMATION. (a) On receipt of a written request of a person or the parent or guardian of a child that includes a showing by the person or the parent or guardian that a law enforcement agency may have collected criminal information under this chapter relating to the person or child that is inaccurate or that does not comply with the submission criteria under Article 61.02(c), the head of the agency or the designee of the agency head shall review criminal information collected by the agency under this chapter relating to the person or child to determine if:

(1) reasonable suspicion exists to believe that the information is accurate; and

(2) the information complies with the submission criteria established under Article 61.02(c).

(b) If, after conducting a review of criminal information under Subsection (a), the agency head or designee determines that:

(1) reasonable suspicion does not exist to believe that the information is accurate or the information does not comply with the submission criteria, the agency shall:

(A) destroy all records containing the information; and

(B) notify the department and the person who requested the review of the agency's determination and the destruction of the records; or

(2) reasonable suspicion does exist to believe that the information is accurate and the information complies with the submission criteria, the agency shall notify the person who requested the review of the agency's determination and that the person is entitled to seek judicial review of the agency's determination under Article 61.09.

(c) On receipt of notice under Subsection (b), the department shall immediately destroy all records containing the information that is the subject of the notice in the intelligence database maintained by the department under Article 61.03.

(d) A person who is committed to the Texas Youth Commission or confined in the institutional division or the state jail division of the Texas Department of Criminal Justice does not while committed or confined have the right to request review of criminal information under this article.

Art. 61.09. JUDICIAL REVIEW. (a) A person who is entitled to seek judicial review of a determination made under Article 61.08(b)(2) may file a petition for review in district court in the county in which the person resides.

(b) On the filing of a petition for review under Subsection (a), the district court shall conduct an in camera review of the criminal information that is the subject of the determination to determine if:

(1) reasonable suspicion exists to believe that the information is accurate; and

(2) the information complies with the submission criteria under Article 61.02(c).

(c) If, after conducting an in camera review of criminal information under Subsection (b), the court finds that reasonable suspicion does not exist to believe that the information is accurate or that the information does not comply with the submission criteria, the court shall:

(1) order the law enforcement agency that collected the information to destroy all records containing the information; and

(2) notify the department of the court's determination and the destruction of the records.

(d) A petitioner may appeal a final judgment of a district court conducting an in camera review under this article.

(e) Information that is the subject of an in camera review under this article is confidential and may not be disclosed.

SECTION 8. The change in law made by this Act applies to criminal information collected under Chapter 61, Code of Criminal Procedure, as amended by this Act, before, on, or after the effective date of this Act.

SECTION 9. (a) A law enforcement agency is not required to send information to the intelligence database as required by Subsection (c), Article 61.03, Code of Criminal Procedure, as amended by this Act, until September 1, 2000.

(b) The Department of Public Safety of the State of Texas is not required to establish an intelligence database as required by Article 61.03, Code of Criminal Procedure, as amended by this Act, until September 1, 2000.

(c) Not later than September 1, 2000, each law enforcement agency that compiled and maintained criminal information under Chapter 61, Code of Criminal Procedure, shall:

(1) review the information contained in the agency's database that was compiled or maintained on or before September 1, 1999, to determine if the agency compiled the information and is maintaining the information in accordance with the criminal intelligence systems operating policies established under 28 C.F.R. Section 23.1 et seq. and the submission criteria established under Subsection (c), Article 61.02, Code of Criminal Procedure, as added by this Act; and

(2) except as provided by Subsection (d) of this section, remove all records containing any criminal information kept in the agency's database that was not

collected or is not being maintained in accordance with the criminal intelligence systems operating policies established under 28 C.F.R. Section 23.1 et seq. and the submission criteria under Subsection (c), Article 61.02, Code of Criminal Procedure, as added by this Act.

(d) A law enforcement agency is not required under Subdivision (2) of Subsection (c) of this section to remove from the agency's database any criminal information that consists solely of a self-admission by an individual of criminal street gang membership.

SECTION 10. Not later than December 1, 2000, the Department of Public Safety of the State of Texas shall report to the legislature on the implementation of the intelligence database maintained by the department under Article 61.03, Code of Criminal Procedure, as amended by this Act.

SECTION 11. This Act takes effect September 1, 1999.

SECTION 12. 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 840**

Senator West submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 840** 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.

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|---|---|
| WEST | HINOJOSA |
| DUNCAN | DUNNAM |
| ELLIS | GUTIERREZ |
| WHITMIRE | KEEL |
| SHAPIRO | WISE |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to the automatic expunction of certain arrest records.

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

SECTION 1. Article 55.01, Code of Criminal Procedure, is amended to read as follows:

Art. 55.01. RIGHT TO EXPUNCTION. (a) A person who has been arrested for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if:

(1) the person is tried for the offense for which the person was arrested and is:

(A) acquitted by the trial court, except as provided by Subsection (c) of this section; or

(B) convicted and subsequently pardoned; or

(2) each of the following conditions exist:

(A) an indictment or information charging the person [~~him~~] with commission of a felony has not been presented against the person [~~him~~] for an offense arising out of the transaction for which the person [~~he~~] was arrested or, if an indictment or information charging the person [~~him~~] with commission of a felony was presented, it has been dismissed and the court finds that it was dismissed because the presentment had been made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of the dismissal to believe the person committed the offense or because it was void;

(B) the person [~~he~~] has been released and the charge, if any, has not resulted in a final conviction and is no longer pending and there was no court ordered community supervision [~~probation~~] under Article 42.12[~~, Code of Criminal Procedure, nor a conditional discharge under Section 481.109, Health and Safety Code~~]; and

(C) the person [~~he~~] has not been convicted of a felony in the five years preceding the date of the arrest.

(b) Except as provided by Subsection (c) of this section, a [~~A~~] district court may expunge all records and files relating to the arrest of a person who has been arrested for commission of a felony or misdemeanor under the procedure established under Article 55.02 of this code if the person is:

(1) tried for the offense for which the person was arrested;

(2) convicted of the offense; and

(3) acquitted by the court of criminal appeals.

(c) A court may not order the expunction of records and files relating to an arrest for an offense for which a person is subsequently acquitted, whether by the trial court or the court of criminal appeals, if the offense for which the person was acquitted arose out of a criminal episode, as defined by Section 3.01, Penal Code, and the person was convicted of or remains subject to prosecution for at least one other offense occurring during the criminal episode.

SECTION 2. Article 55.02, Code of Criminal Procedure, is amended to read as follows:

Art. 55.02. PROCEDURE FOR EXPUNCTION. Sec. 1. At the request of the defendant and after notice to the state and a hearing, the trial court presiding over the case in which the defendant was acquitted shall enter an order of expunction for a person entitled to expunction under Article 55.01(a)(1)(A) not later than the 30th day after the date of the acquittal. Upon acquittal, the court shall advise the defendant of the right to expunction. The defendant shall provide to the court all of the information required in a petition for expunction under Section 2(b).

Sec. 2. (a) A person who is entitled to expunction of records and files under Article 55.01(a)(1)(B) or 55.01(a)(2) or a person who is eligible for expunction of records and files under Article 55.01(b) [~~this chapter~~] may file an ex parte petition for expunction in a district court for the county in which the person [~~he~~] was arrested or in the county where the offense was alleged to have occurred.

(b) The petition must be verified and shall include the following or an explanation for why one or more of the following is not included:

(1) the petitioner's:

(A) full name;

(B) sex;

(C) race;

(D) date of birth;

(E) driver's license number;

(F) social security number; and

(G) address at the time of the arrest;

(2) the offense charged against the petitioner;

(3) the date the offense charged against the petitioner was alleged to have been committed;

(4) the date the petitioner was arrested;

(5) the name of the county where the petitioner was arrested and if the arrest occurred in a municipality, the name of the municipality;

(6) the name of the agency that arrested the petitioner;

(7) the case number and court of offense; and

(8) a list of all law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state and of all central federal depositories of criminal records that the petitioner has reason to believe have records or files that are subject to expunction.

(c) [~~Sec. 2.~~] The court shall set a hearing on the matter no sooner than thirty days from the filing of the petition and shall give reasonable notice of the hearing to each official or agency or other entity named in the petition by certified mail, return receipt requested, and such entity may be represented by the attorney responsible for providing such agency with legal representation in other matters.

(d) [~~Sec. 3. (a)~~] If the court finds that the petitioner is entitled to expunction of any records and files that are the subject of the petition, it shall enter an order directing expunction.

Sec. 3. (a) In an order of expunction issued under this article, the trial court shall require [~~and directing~~] any state agency that sent information concerning the arrest to a central federal depository to request such depository to return all records and files subject to the order of expunction. The person who is the subject of the expunction order [~~Any petitioner~~] or an agency protesting the expunction may appeal the court's decision in the same manner as in other civil cases.

(b) The order of expunction entered by the trial court shall have attached and incorporate by reference a copy of the judgment of acquittal and shall include:

(1) the following information on the person who is the subject of the expunction order:

(A) full name;

(B) sex;

(C) race;

(D) date of birth;

(E) driver's license number; and

(F) social security number;

(2) the offense charged against the person who is the subject of the expunction order;

(3) the date the person who is the subject of the expunction order was arrested;

(4) the case number and court of offense; and

(5) the tracking incident number (TRN) assigned to the individual incident of arrest under Article 60.07(b)(1) by the Department of Public Safety.

(c) When the order of expunction is final, the clerk of the court shall send a certified copy of the order by certified mail, return receipt requested, to the Crime Records Service of the Department of Public Safety and to each official or agency or other entity of this state or of any political subdivision of this state designated by the person who is the [~~named in the order that there is reason to believe has any records or files that are~~] subject of [~~to~~] the order. The Department of Public Safety shall notify [~~send a copy by certified mail, return receipt requested, of the order to~~] any central federal depository of criminal records by any means, including electronic transmission, of the order [~~that there is reason to believe has any of the records, together~~] with an explanation of the effect of the order and a request that the records in possession of the depository, including any information with respect to the order [~~proceeding under this article~~], be destroyed or returned to the court.

(d) [~~(b)~~] All returned receipts received by the clerk from notices of the hearing and copies of the order shall be maintained in the file on the proceedings under this chapter.

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, 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, including a civil suit or suit for possession of or access to a child.

(b) Unless the person who is the subject of the expunction order [~~the petitioner~~] is again arrested for or charged with an offense arising out of the transaction for which the person [~~he~~] was arrested or unless the court provides for the retention of records and files under Subsection (a), the provisions of Articles 55.03 and 55.04 of this code apply to files and records retained under this section.

Sec. 5. (a) On receipt of the order, each official or agency or other entity named in the order shall:

(1) return all records and files that are subject to the expunction order to the court or, if removal is impracticable, obliterate all portions of the record or file that identify the person who is the subject of the order [~~petitioner~~] and notify the court of its action; and

(2) delete from its public records all index references to the records and files that are subject to the expunction order.

(b) Except in the case of a person who is the subject of an expunction order on the basis of an acquittal, the [~~The~~] court may give the person who is the subject of the order [~~petitioner~~] all records and files returned to it pursuant to its order.

(c) If an order of expunction is issued under this article, the court records concerning expunction proceedings are not open for inspection by anyone except the person who is the subject of the order [~~petitioner~~] unless the order permits retention of a record under Section 4 of this article and the person [~~petitioner~~] is again arrested for or charged with an offense arising out of the transaction for which the person [~~he~~] was arrested or unless the court provides for the retention of records and files under Section 4(a). The clerk of the court issuing the order shall obliterate all public references to the proceeding and maintain the files or other records in an area not open to inspection.

(d) Except in the case of a person who is the subject of an expunction order on the basis of an acquittal, the [~~The~~] clerk of the court shall destroy all the files or other records maintained under Subsection (c) of this section on the first anniversary of the date the order of expunction is issued unless the records or files were released under Subsection (b) of this section.

(e) The clerk shall certify to the court the destruction of files or other records under Subsection (d) of this section.

SECTION 3. Article 55.03, Code of Criminal Procedure, is amended to read as follows:

Art. 55.03. EFFECT OF EXPUNCTION. After entry of an expunction order:

(1) the release, dissemination, or use of the expunged records and files for any purpose is prohibited;

(2) except as provided in Subdivision 3 of this article, the person arrested [~~petitioner~~] may deny the occurrence of the arrest and the existence of the expunction order; and

(3) the person arrested [~~petitioner~~] or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

SECTION 4. Article 55.06, Code of Criminal Procedure, is amended to read as follows:

Art. 55.06. LICENSE SUSPENSIONS AND REVOCATIONS. Records [~~A person may not use the provisions of this chapter to expunge records~~] relating to the suspension or revocation of a driver's license, permit, or privilege to operate a motor vehicle may not be expunged under this chapter except as provided in Section 524.015, Transportation Code [~~5(d), Article 6687b-1, Revised Statutes~~], or Section 724.048 of that code [~~2(r), Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 6701l-5, Vernon's Texas Civil Statutes)~~].

SECTION 5. (a) The change in law made by this Act applies only to the expunction of arrest records and files relating to an arrest made on or after the effective date of this Act or relating to a criminal offense for which an acquittal occurred on or after the effective date of this Act.

(b) Expunction of arrest records and files relating to an arrest made or an acquittal that occurred before the effective date of this Act is governed by the law in effect when the arrest was made or the acquittal occurred, and the former law is continued in effect for that purpose.

SECTION 6. The Texas Department of Public Safety shall implement the provisions of Chapter 55, Code of Criminal Procedure, as amended by this Act, imposing duties on the department, from funds made available to the department in the General Appropriations Act.

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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON**
**HOUSE BILL 1703**

Senator Madla submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 1703** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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| MADLA | GALLEGO |
| NIXON | Y. DAVIS |

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| LUCIO | SIEBERT |
| LINDSAY | ALEXANDER |
| 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 1438**

Senator Duncan submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 1438** 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.

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| DUNCAN | WILSON |
| RATLIFF | WOLENS |
| SHAPIRO | PITTS |
| CAIN | MCCALL |
| MONCRIEF | PICKETT |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to a pilot project transferring certain professional and occupational licensing boards to self-directed semi-independent status; making an appropriation.

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

SECTION 1. LEGISLATIVE INTENT. (a) Several agencies of the State of Texas regulate specific professions in the public interest. While these licensing agencies perform important public functions, the populations most directly affected by their activities, the members of the professions, are small in comparison to the population of the state. While the agencies may collect and remit the $200 professional fee to the state, their operations are supported by examination, licensing, and other fees paid by the professionals they regulate.

(b) The state controls the activities of the licensing agencies in many ways. The governor appoints the board members who run the agencies. The agencies are subject to the open meetings law, Chapter 551, Government Code, and the public information law, Chapter 552, Government Code. The decisions of the agencies are procedurally and substantively guided by the Administrative Procedure Act, Chapter 2001,

Government Code, and ultimately the courts of the State of Texas can review and reverse their decisions. All contested cases brought by the agencies are tried before administrative law judges of the State Office of Administrative Hearings. The agencies are represented in the courts of the State of Texas by the attorney general. They are subject to sunset review and file annual reports with the governor. They are audited by the state auditor and several are subject to the Texas Internal Auditing Act, Chapter 2102, Government Code.

(c) In addition, the agencies do not have unfettered discretion to raise funds from the public. The legislature has set specific limits on the amounts that may be charged the regulated profession for the services provided by the agencies.

(d) The agencies perform functions vital to the interest of the state and of its people. They regulate their respective professions to ensure that persons holding professional licenses meet the highest standards of competence and professionalism. The public relies on these professionals for their expert judgment on matters ranging from the soundness of public structures to the financial solvency of a potential investment. The public has a vital interest in maintaining competence and improving the quality of the licensees of the agencies.

(e) At the same time, the controls on the licensing agencies ensure that the functions of the agencies are carried out efficiently and effectively. Texas has a number of semi-independent agencies that carry out the functions of the state in other areas well and in the public interest with far fewer controls than those enumerated in this section.

(f) Therefore, the legislature intends through this Act to establish a pilot project to assess the practicality and efficiency of changing certain professional and occupational licensing boards to semi-independent self-directed status. The state agencies involved in this pilot project have well-defined missions and well-run boards and administrations. The pilot project will run for a specified time and will expire if not renewed. If successful, approximately 100 employees will be removed from the state payroll and the administrative burden of state government will be reduced.

SECTION 2. AMENDMENT. Title 132, Revised Statutes, is amended by adding Article 8930 to read as follows:

Art. 8930. SELF-DIRECTED SEMI-INDEPENDENT AGENCY PROJECT ACT

Sec. 1. SHORT TITLE. This Act shall be known as the Self-Directed Semi-Independent Agency Project Act.

Sec. 2. AGENCY PARTICIPATION. The following agencies shall be part of the pilot project created by this Act:

(1) the Texas State Board of Public Accountancy;

(2) the Texas Board of Professional Engineers; and

(3) the Texas Board of Architectural Examiners.

Sec. 3. DEFINITION. In this Act, "project agency" means an agency listed in Section 2 of this Act.

Sec. 4. PILOT PROJECT. (a) Notwithstanding any other provision of law, each project agency shall become self-directed and semi-independent as specified in this Act.

(b) Each project agency shall continue to be a state agency, as that term is defined in Section 2001.003(7), Government Code.

(c) This Act is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, this Act expires September 1, 2003.

Sec. 5. GENERAL DUTIES OF ALL PROJECT AGENCIES. In addition to the duties enumerated in the enabling legislation specifically applicable to each project agency, each project agency shall have the duties prescribed by Sections 6 through 9 of this Act.

Sec. 6. BUDGET. (a) A project agency shall adopt a budget annually using generally accepted accounting principles. The budget shall be reviewed and approved only by the project agency's governing board notwithstanding any other provision of law, including the General Appropriations Act. No costs shall be incurred by the general revenue fund. A project agency shall be responsible for all costs, both direct and indirect.

(b) A project agency shall keep financial and statistical information as necessary to disclose completely and accurately the financial condition and operation of the project agency.

(c) The Texas State Board of Public Accountancy shall annually remit $500,000 to the general revenue fund, the Texas Board of Professional Engineers shall annually remit $50,000 to the general revenue fund, and the Texas Board of Architectural Examiners shall annually remit $700,000 to the general revenue fund.

Sec. 7. AUDITS. Nothing in this Act shall affect the duty of the State Auditor to audit a project agency. The State Auditor shall enter into a contract and schedule with each project agency to conduct audits, including financial reports and performance audits. Costs incurred in performing such audits shall be reimbursed by the project agency.

Sec. 8. REPORTING REQUIREMENTS. (a) A project agency shall submit to the legislature and the governor by the first day of the regular session of the legislature a report describing all of the agency's activities in the previous biennium. The report shall include:

(1) an audit required by Section 7 of this Act;

(2) a financial report of the previous fiscal year;

(3) a description of any changes in licensing fees;

(4) a report on the number of examination candidates, licensees, certificate holders, and enforcement activities and any changes in those figures; and

(5) a description of all new rules adopted or repealed.

(b) In addition to the reporting requirements of Subsection (a) of this section, each project agency shall report annually, not later than November 1, to the governor, to the committee of each house of the legislature that has jurisdiction over appropriations, and to the Legislative Budget Board the following:

(1) the salary for all project agency personnel and the total amount of per diem expenses and travel expenses paid for all agency employees;

(2) the total amount of per diem expenses and travel expenses paid for each member of the governing body of each project agency;

(3) each project agency's operating plan and budget covering a two-year period; and

(4) a detailed report of all revenue received and all expenses incurred by the project agency in the previous 12 months.

Sec. 9. DISPOSITION OF FEES COLLECTED. If provided in a project agency's enabling legislation, the project agency shall collect a professional fee of $200 from its licensees annually which shall be remitted to the state. If provided in a project agency's enabling legislation, the project agency shall collect a scholarship fee of $10 annually from its licensees and shall remit it to the state.

Sec. 10. GENERAL POWERS OF ALL PROJECT AGENCIES. In addition to the powers enumerated in each project agency's enabling legislation, each project agency shall have the powers described in Sections 11 through 14 of this Act.

Sec. 11. ABILITY TO CONTRACT. To carry out and promote the objectives of this Act, a project agency may enter into contracts and do all other acts incidental to those contracts that are necessary for the administration of its affairs and for the attainment of its purposes; provided, however, that any indebtedness, liability, or obligation of the project agency shall not:

(1) create a debt or other liability of the state or any other entity other than the project agency; or

(2) create any personal liability on the part of the members of the board of the project agency or its employees.

Sec. 12. PROPERTY. A project agency may acquire by lease, and maintain, use, and operate, any real, personal, or mixed property necessary to the exercise of the powers, rights, privileges, and functions of the agency.

Sec. 13. SUITS. The office of the attorney general shall represent a project agency in any litigation. The attorney general may assess and collect from the project agency reasonable attorney's fees associated with any litigation under this section.

Sec. 14. FEES. Subject to the limitations, if any, in the applicable enabling legislation, each project agency may set the amount of fees by statute or rule as necessary for the purpose of carrying out the functions of the project agency.

Sec. 15. POST-PARTICIPATION LIABILITY. (a) If a state agency no longer has status under this Act as a self-directed semi-independent project agency either because of the expiration of this Act or for any other reason, the agency shall be liable for any expenses or debts incurred by the agency during the time the agency participated in the pilot project. The agency's liability under this section includes liability for any lease entered into by the agency. The state is not liable for any expense or debt covered by this subsection and money from the general revenue fund may not be used to repay the expense or debt.

(b) If a state agency no longer has status under this Act as a self-directed semi-independent project agency either because of the expiration of this Act or for any other reason, ownership of any property or other asset acquired by the agency during the time the agency participated in the pilot project shall be transferred to the state.

Sec. 16. OPEN GOVERNMENT. Subject to the confidentiality provisions of a project agency's enabling legislation:

(1) meetings of the project agency are subject to Chapter 551, Government Code; and

(2) records maintained by the project agency are subject to Chapter 552, Government Code.

Sec. 17. MEMBERSHIP IN EMPLOYEE RETIREMENT SYSTEM. Employees of the project agencies are members of the Employees Retirement System of Texas under Chapter 812, Government Code, and transition to independent status shall have no effect on their membership.

SECTION 3. AMENDMENT. Section 22A, Public Accountancy Act of 1991 (Article 41a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 22A. ENFORCEMENT COMMITTEES[~~; ENFORCEMENT FUND~~]. [~~(a)~~] The board may appoint enforcement committees from its membership and may adopt rules consistent with this Act as necessary for the performance of each committee's duties. An enforcement committee shall consider and make recommendations to the full board on matters relating to the enforcement of this Act and the rules adopted in accordance with this Act. At least one member of the board who is a public representative member must serve on each enforcement committee.

[~~(b) A special fund is established for the exclusive use of the board to be known as the public accountancy enforcement fund. The fund may be used only to finance the enforcement functions performed under this Act. Money received by the board from a fee increase adopted under Section 9(g) of this Act and money related to an administrative penalty and received by the board under Section 21D of this Act shall be deposited in the fund. The comptroller is the custodian of the fund. The comptroller shall issue warrants from the fund supported only by vouchers signed by the chairman and the executive director. The fund shall be appropriated to the board by the legislature.~~]

SECTION 4. AMENDMENT. Section 4A, Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4A. [~~(a)~~] Each member of the Board is entitled to a [~~the~~] per diem [~~set by legislative appropriation~~] for each day that the member engages in the business of the Board. A member is entitled to compensation for travel expenses, including food, lodging, and transportation expenses[~~, as provided by the General Appropriations Act~~].

[~~(b) The per diem and expenses of the members of the Board shall be paid from the Architectural Examiners Fund.~~

[~~(c) General revenue funds may not be used for the administration of this Act except as provided by the General Appropriations Act.~~]

SECTION 5. APPROPRIATIONS. To provide a reasonable period for each project agency under Article 8930, Revised Statutes, as added by this Act, to establish itself as semi-independent and self-directed after the conclusion of fiscal year 1999, each project agency is appropriated an amount equal to 50 percent of that agency's appropriated amount for fiscal year 1999. This appropriation shall be repaid to the general revenue fund by the project agency as funds become available.

SECTION 6. EFFECT OF TRANSITION TO INDEPENDENT STATUS. (a) The transfer of a project agency under Article 8930, Revised Statutes, as added by this Act, to semi-independent status and the expiration of semi-independent status shall not act to cancel, suspend, or prevent:

(1) any debt owed to or by the project agency;

(2) any fine, tax, penalty, or obligation of any party;

(3) any contract or other obligation of any party; or

(4) any action taken by the project agency in administration or enforcement of its duties.

(b) Each project agency shall continue to have and exercise the powers and duties allocated to it in its enabling legislation, except as specifically amended by this Act.

(c) Title to all supplies, materials, records, equipment, books, papers, and facilities used by each project agency is transferred to each respective project agency in fee simple. Nothing in this Act shall have any effect on property already owned by the project agencies. At its sole option, each project agency may continue to occupy its current premises at the rates prescribed by the General Services Commission for indirect costs and bond debt service for the duration of the pilot project.

(d) Examination fees collected prior to September 1, 1999, for examinations conducted after September 1, 1999, shall be made available to the project agency for costs associated with conducting the examinations.

SECTION 7. EFFECTIVE DATE. This Act takes effect September 1, 1999.

SECTION 8. EMERGENCY. 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 2954**

Senator Brown submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 2954** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

| | |
|---|---|
| BROWN | GRAY |
| BIVINS | HEFLIN |
| MADLA | MCCALL |
| GALLEGOS | BOSSE |
| ARMBRISTER | |
| 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 89

Senator Madla submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 89** 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 | BOSSE |
| LINDSAY | WALKER |
| LUCIO | GREENBERG |
| ARMBRISTER | B. TURNER |
| On the part of the Senate | On the part of the House |

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 Section 42.021, the annexation of an area described by Subsection (a) does not expand the extraterritorial jurisdiction of the municipality.

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, 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 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) 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 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 or was the subject of:

(A) an industrial district contract under Section 42.044; or

(B) 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.

(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.

(j) If a municipality has an Internet website, the municipality shall:

(1) post and maintain the posting of its annexation plan on its Internet website;

(2) post and maintain the posting on its Internet website of any amendments to include an area in its annexation plan until the date the area is annexed; and

(3) post and maintain the posting on its Internet website of any amendments to remove an area from its annexation plan until the date the municipality may again include the area in its annexation plan.

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 date 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. Subsection (a), Section 43.054, 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.

SECTION 6. Subchapter C, Chapter 43, Local Government Code, is amended by adding Sections 43.0545 and 43.0546 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 unless the area being annexed includes land in addition to a road, highway, river, lake, or other body of water.

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 before September 1, 1999, 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 before September 1, 1999, 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 September 1, 1999;

(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 coterminous 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.

SECTION 7. 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 certain services cannot reasonably be provided within that period and the municipality proposes a schedule for providing those services [~~(d)~~]. If the municipality proposes a schedule to extend the period for providing certain services, the schedule must provide for the provision of full municipal services no later than 4-1/2 years after the effective date of the annexation. If the area was annexed after December 1, 1998, and before September 1, 1999, the municipality shall provide sewer services in the annexed area as provided by this subsection, except that, no later than five years after the effective date of the annexation, the municipality may not provide sewer services in the annexed area by means of a package wastewater treatment plant. However, under the program if the municipality provides any of the following services within the corporate boundaries of the municipality before annexation, the municipality must provide those [~~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.

[~~(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 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 the period provided in the service plan. The service plan may be amended to extend the period for construction if the construction is proceeding with all deliberate speed [~~4-1/2 years after that date~~]. 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 the period provided in the service plan [~~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[~~:~~

[~~(A) than were in existence in the area immediately preceding the date of the annexation; or~~

[~~(B) than are otherwise available in other parts of the municipality with land uses and population densities similar to those reasonably contemplated or projected in the area~~].

(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.

(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 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 disputes 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.

(n) Before the second anniversary of 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).

SECTION 8. 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 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 published at least once on or after the 20th day but before the 10th day before the date of the hearing. The notice for each hearing must be posted on the municipality's Internet website on or after the 20th day but before the 10th day before the date of the hearing and must remain posted until 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(b) 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 9. 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. (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) This subsection applies only to an area described by Section 43.052(h)(1). Before the 30th day before the date of the first hearing required under Section 43.063, a municipality shall give written notice of its intent to annex the area to:

(1) each property owner in an area proposed for annexation, as indicated by the appraisal records furnished by the appraisal district for each county in which the area is located;

(2) each public entity, as defined by Section 43.053, or private entity that provides services in the area proposed for annexation; and

(3) 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. 43.063. 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 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 published at least once on or after the 20th day but before the 10th day before the date of the hearing. The notice for each hearing must be posted on the municipality's Internet website on or after the 20th day but before the 10th day before the date of the hearing and must remain posted until 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)-(o) apply to the annexation of an area to which this subchapter applies.

SECTION 10. Subchapter D, Chapter 43, Local Government Code, is amended by adding Section 43.0712 to read as follows:

Sec. 43.0712. INVALIDATION OF ANNEXATION OF SPECIAL DISTRICT; REIMBURSEMENT OF DEVELOPER. (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 after all appeals have been exhausted, 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 Section 43.0715.

(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 acquire the utilities from the municipality and reimburse the municipality for amounts the municipality paid the developer. The payment to the municipality shall be governed by the requirements of the Texas Natural Resource Conservation Commission.

SECTION 11. 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. A district included in a municipality's annexation plan under Section 43.052:

(1) may not submit its written request before the date of the second hearing required under Section 43.0561; and

(2) must submit its written request before the 61st day after the date of the second hearing required under Section 43.0561 [~~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 12. 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 13. Subsection (a), Section 43.121, 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 14. Subsection (c), Section 43.141, 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 15. 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 16. Subchapter Z, Chapter 43, Local Government Code, is amended by adding Sections 43.905 and 43.906 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 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.

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 (42 U.S.C. Section 1973c), of any voting change resulting from the annexation or proposed annexation from the United States Department of Justice 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 Department of Justice.

SECTION 17. (a) This Act takes effect September 1, 1999.

(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 Subsections (d) and (g) of this section, the changes in law made by Sections 2 through 8 and 10 through 15 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, 43.054, 43.0545, 43.0546, 43.056(b), (c), (e), (f), (g), (l), (m), (n), and (o), 43.0565, 43.0712, 43.0751, 43.121(a), 43.141(c), 43.148, 43.905, and 43.906, 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.

(e) The changes in law made by this Act in Sections 43.002, 43.054, 43.0545, 43.0546, 43.056(b), (c), (e), (f), (g), (l), (m), (n), and (o), 43.0565, 43.0712, 43.121(a), 43.141(c), 43.148, 43.905, and 43.906, 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.

(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 43.0712, Local Government Code, as added by this Act, applies to an annexation that occurs before, on, or after the effective date of this Act.

SECTION 18. 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 178**

Senator Ratliff submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 178** 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.

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|---|---|
| RATLIFF | JUNELL |
| TRUAN | Y. DAVIS |
| DUNCAN | OLIVEIRA |
| MONCRIEF | FLORES |
| FRASER | HEFLIN |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to state agency practices and duties, including codification of certain state agency practices and duties currently prescribed by the General Appropriations Act.

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

ARTICLE 1. PROVISIONS RELATED TO STATE AGENCY PRACTICES AND DUTIES IN GENERAL APPROPRIATIONS ACT

SECTION 1.01. Subsection (a), Section 101.027, Civil Practice and Remedies Code, is amended to read as follows:

(a) Each governmental unit other than a unit of state government may purchase insurance policies protecting the unit and the unit's employees against claims under this chapter. A unit of state government may purchase such a policy only to the extent that the unit is authorized or required to do so under other law.

SECTION 1.02. Section 106.001, Civil Practice and Remedies Code, is amended by adding Subsection (c) to read as follows:

(c) This section does not prohibit the adoption of a program designed to increase the participation of businesses owned and controlled by women, minorities, or disadvantaged persons in public contract awards.

SECTION 1.03. Chapter 306, Government Code, is amended by adding Section 306.007 to read as follows:

Sec. 306.007. MINUTES AND REPORTS ELECTRONICALLY AVAILABLE TO LEGISLATURE. A state officer or board, commission, or other agency in the executive branch of state government, and an agency in the judicial branch of state government other than a court, shall make reports required by law and minutes of meetings of the agency's governing body available to members of the legislature and to agencies in the legislative branch of state government in an electronic format determined by the Texas Legislative Council.

SECTION 1.04. Subsection (c), Section 321.013, Government Code, is amended to read as follows:

(c) The State Auditor shall recommend [~~determine~~] the audit plan for the state for each fiscal year to the committee. In devising the plan, the State Auditor shall consider recommendations concerning coordination of agency functions made jointly by representatives [~~the committee composed~~] of the Legislative Budget Board, Sunset Advisory Commission, and State Auditor's Office. The State Auditor shall also consider the extent to which a department has received a significant increase in appropriations, including a significant increase in federal or other money passed through to the department, and shall review procurement activities for compliance with Section 2161.123. The plan shall provide for auditing of federal programs at least once in each fiscal biennium and shall ensure that audit requirements of all bond

covenants and other credit or financial agreements are satisfied. The committee shall review and approve the plan.

SECTION 1.05. Subsection (c), Section 321.014, Government Code, is amended to read as follows:

(c) The State Auditor shall submit each report to the committee prior to publication. The State Auditor shall file a copy of each report prepared under this section with:

(1) the governor;

(2) the lieutenant governor;

(3) the speaker of the house of representatives;

(4) the secretary of state;

(5) the Legislative Reference Library;

(6) each member of [~~the chairman of~~] the governing body and the administrative head of each entity that is the subject of the report; and

(7) members of the legislature on a committee with oversight responsibility for the entity or program that is the subject of the report.

SECTION 1.06. Section 325.011, Government Code, is amended to read as follows:

Sec. 325.011. CRITERIA FOR REVIEW. The commission and its staff shall consider the following criteria in determining whether a public need exists for the continuation of a state agency or its advisory committees or for the performance of the functions of the agency or its advisory committees:

(1) the efficiency with which the agency or advisory committee operates;

(2) an identification of the objectives intended for the agency or advisory committee and the problem or need that the agency or advisory committee was intended to address, the extent to which the objectives have been achieved, and any activities of the agency in addition to those granted by statute and the authority for these activities;

(3) an assessment of less restrictive or alternative methods of performing any regulation that the agency performs that could adequately protect the public;

(4) the extent to which the advisory committee is needed and is used;

(5) the extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies and the extent to which the programs administered by the agency can be consolidated with the programs of other state agencies;

(6) whether the agency has recommended to the legislature statutory changes calculated to be of benefit to the public rather than to an occupation, business, or institution that the agency regulates;

(7) the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency;

(8) the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency;

(9) the extent to which the agency has complied with applicable requirements of:

(A) an agency of the United States or of this state regarding equality of employment opportunity and the rights and privacy of individuals; and

(B) state law and applicable rules of any state agency regarding purchasing goals and programs for historically underutilized businesses;

(10) the extent to which changes are necessary in the enabling statutes of the agency so that the agency can adequately comply with the criteria listed in this section;

(11) the extent to which the agency issues and enforces rules relating to potential conflicts of interest of its employees;

(12) the extent to which the agency complies with Chapter 552, and with Chapter 551; and

(13) the effect of federal intervention or loss of federal funds if the agency is abolished.

SECTION 1.07. Subchapter F, Chapter 403, Government Code, is amended by adding Section 403.097 to read as follows:

Sec. 403.097. FUNDS EXPENDED IN PROPORTION TO METHOD OF FINANCING. (a) The comptroller may prescribe rules to ensure that, when it is necessary to preserve cash balances in the funds and accounts in the state treasury, appropriations are drawn from the treasury in proportion to the methods of financing specified in the Acts authorizing the appropriations.

(b) The rules may include procedures relating to the deposit of receipts and the issuance of warrants.

(c) This section does not affect other powers of the comptroller under this subchapter, Subchapter H of Chapter 404, or other law.

(d) This section does not apply if the method of financing specified for an agency or an institution of higher education in the Act authorizing appropriations includes interest earned or to be earned on local funds of the agency or institution.

SECTION 1.08. Subsection (b), Section 403.245, Government Code, is amended to read as follows:

(b) The replenishment of a petty cash account is an expenditure from the corresponding fund and shall be drawn from the appropriation from which the expenditure would otherwise have been made.

SECTION 1.09. Section 771.008, Government Code, is amended by adding Subsection (d) to read as follows:

(d) This subsection applies only if the services or resources are provided under a written contract or agreement. The receiving agency shall reimburse the providing agency within 30 days after the date by which the services or resources are provided and an invoice is received. If the receiving agency does not accept the services or resources or finds an error in the invoice, it shall notify the providing agency of the fact in writing as soon as possible within the 30-day period and make payment within 10 days after the date the agencies agree the problems are corrected or the error resolved. If the agencies cannot agree on the amount of the reimbursement, the comptroller shall determine the appropriate amount. If the receiving agency does not, within the 30-day period, reimburse the providing agency or give the providing agency written notice of a problem or error, the comptroller on request of the providing agency may transfer from amounts appropriated to the receiving agency the appropriate amount in accordance with this section.

SECTION 1.10. Subdivision (7), Section 811.001, Government Code, is amended to read as follows:

(7) "Compensation" means the base salary of a person; amounts that would otherwise qualify as compensation but are not received directly by a person pursuant to a good faith, voluntary, written salary reduction agreement in order to finance

payments to a deferred compensation or tax sheltered annuity program specifically authorized by state law or to finance benefit options under a cafeteria plan qualifying under Section 125 of the Internal Revenue Code of 1986 (26 U.S.C. Section 125); longevity and hazardous duty pay; nonmonetary compensation, the value of which is determined by the retirement system; amounts by which a person's salary is reduced under a salary reduction agreement authorized by Chapter 610; and the benefit replacement pay a person earns under Subchapter H, Chapter 659, as added by Chapter 417, Acts of the 74th Legislature, 1995, except for the benefit replacement pay a person earns as a result of a payment made under Subchapter B, C, or D, Chapter 661. The term excludes overtime pay and a cleaning or clothing allowance.

SECTION 1.11. (a) Subchapter B, Chapter 2001, Government Code, is amended by adding Section 2001.039 to read as follows:

Sec. 2001.039. AGENCY REVIEW OF EXISTING RULES. (a) A state agency shall review and consider for readoption each of its rules in accordance with this section.

(b) A state agency shall review a rule not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date. The adoption of an amendment to an existing rule does not affect the dates on which the rule must be reviewed except that the effective date of an amendment is considered to be the effective date of the rule if the agency formally conducts a review of the rule in accordance with this section as part of the process of adopting the amendment.

(c) The state agency shall readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

(d) The procedures of this subchapter relating to the original adoption of a rule apply to the review of a rule and to the resulting repeal, readoption, or readoption with amendments of the rule, except as provided by this subsection. Publishing the Texas Administrative Code citation to a rule under review satisfies the requirements of this subchapter relating to publishing the text of the rule unless the agency readopts the rule with amendments as a result of the review.

(e) A state agency's review of a rule must include an assessment of whether the reasons for initially adopting the rule continue to exist.

(b) The duties prescribed by this subsection apply only to state agency rules that are in effect on September 1, 1999, and that have not already been reviewed in accordance with Section 167, Article IX, Chapter 1452, Acts of the 75th Legislature, Regular Session, 1997 (General Appropriations Act). A state agency shall review each of those rules in accordance with Section 2001.039, Government Code, as added by this Act, and in accordance with this subsection not later than August 31, 2003. Not later than August 31, 2000, each state agency shall develop and send to the secretary of state for publication in the Texas Register a plan under which the agency will review its existing rules. The plan must state for each of those rules the date by which the state agency will begin the review required by Section 2001.039, Government Code, as added by this Act.

(c) For purposes of subsequent reviews under Section 2001.039, Government Code, as added by this Act, the effective date of an existing rule initially reviewed under Subsection (b) of this section or under Section 167, Article IX, Chapter 1452, Acts of the 75th Legislature, Regular Session, 1997 (General Appropriations Act), is considered to be the date on which the state agency begins the review of the rule by publishing in the Texas Register the notice for the review required under Section 2001.024, Government Code, through either Subsection (d), Section 2001.039, or Section 167.

SECTION 1.12. Subchapter D, Chapter 2052, Government Code, is amended by adding Section 2052.304 to read as follows:

Sec. 2052.304. USE OF CERTAIN PRINTING STOCK. (a) A state officer or board, court, commission, or other agency in the executive or judicial branch of state government may not publish a report or other printed materials on enamel-coated, cast-coated, or dull-coated printing stock unless the agency imposes a fee for receipt of the printed materials.

(b) This section does not apply to a publication that promotes tourism or economic development.

SECTION 1.13. Subdivision (6), Section 2054.003, Government Code, is amended to read as follows:

(6) "Information resources" means the procedures, equipment, and software that are employed, designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and associated personnel including consultants and contractors.

SECTION 1.14. Subchapter F, Chapter 2054, Government Code, is amended by adding Sections 2054.121 and 2054.122 to read as follows:

Sec. 2054.121. COORDINATION AMONG INSTITUTIONS OF HIGHER EDUCATION. An institution of higher education shall coordinate its use of information technologies with other such institutions to more effectively provide education, research, and community service.

Sec. 2054.122. COORDINATED TECHNOLOGY TRAINING. A state agency each calendar quarter shall coordinate agency training for the use of information resources technologies with training offered or coordinated by the department. The agency shall use training offered or coordinated by the department if it meets agency requirements and is cost-competitive.

SECTION 1.15. Subchapter C, Chapter 2101, Government Code, is amended by adding Section 2101.0377 to read as follows:

Sec. 2101.0377. REPORTING ACCOUNTING IRREGULARITIES TO STATE AUDITOR. On determining that a state agency, as defined by Section 658.001, or an institution of higher education, as defined by Section 61.003, Education Code, has inaccurately reported the expenditure of appropriated funds or engaged in recurring accounting irregularities, the comptroller shall report the agency or institution to the state auditor for appropriate action, including a comprehensive financial audit.

SECTION 1.16. Subchapter B, Chapter 2155, Government Code, is amended by adding Section 2155.084 to read as follows:

Sec. 2155.084. PURCHASES FROM FEDERAL GOVERNMENT. (a) The commission or the governing body of an institution of higher education may negotiate purchases of goods of any kind needed by a state agency or the institution of higher education with the appropriate agency of the federal government. The governing body of an institution of higher education may act under this section either directly or through the commission or another state agency.

(b) The price of goods that are purchased from the federal government may not exceed the fair market value of the goods.

(c) In negotiating purchases of goods from the federal government under this section or under Subchapter G, Chapter 2175, the commission or the governing body of the institution of higher education may waive the requirement of a bidder's bond and performance bond that otherwise would be required.

SECTION 1.17. Subsection (a), Section 2155.132, Government Code, is amended to read as follows:

(a) A state agency is delegated the authority to purchase goods and services if the purchase does not exceed $15,000. If the commission determines that a state agency has not followed the commission's rules or the laws related to the delegated purchases, the commission shall report its determination to the members of the state agency's governing body and to the governor, lieutenant governor, speaker of the house of representatives, and Legislative Budget Board.

SECTION 1.18. Section 2155.268, Government Code, is amended to read as follows:

Sec. 2155.268. USE OF STATE AGENCY BIDDERS LIST. (a) A state agency may not maintain and use its own bidders list [~~only if the commission determines by rule that the agency has specialized needs that can best be met through maintaining and using its own specialized bidders list~~]. The prohibition of this subsection does not apply to the Texas Department of Transportation or to an institution of higher education as defined by Section 61.003, Education Code, but an institution of higher education should use the master bidders list when possible.

(b) [~~The commission by rule may prescribe the categories of purchases or other acquisitions for which a state agency's specialized bidders list may be used.~~

[~~(c)~~] A state agency may supplement the bidders list with its own list of historically underutilized businesses if it determines that the supplementation will increase the number of historically underutilized businesses that submit bids.

(c) [~~(d)~~] A state agency may purchase goods and services from a vendor who is not on the bidders list if the purchase price does not exceed $5,000.

SECTION 1.19. Subchapter H, Chapter 2155, Government Code, is amended by adding Section 2155.4441 to read as follows:

Sec. 2155.4441. PREFERENCE UNDER SERVICE CONTRACTS. A state agency that contracts for services shall require the contractor, in performing the contract, to purchase products and materials produced in this state when they are available at a price and time comparable to products and materials produced outside this state.

SECTION 1.20. Subchapter A, Chapter 2158, Government Code, is amended by adding Section 2158.0031 to read as follows:

Sec. 2158.0031. PURCHASE PREFERENCE FOR AMERICAN VEHICLES. A state agency authorized to purchase passenger vehicles or other ground transportation vehicles for general use shall purchase economical, fuel-efficient vehicles assembled in the United States unless such a purchase would have a significant detrimental effect on the use to which the vehicles will be put.

SECTION 1.21. Subdivisions (2) and (3), Section 2161.001, Government Code, are amended to read as follows:

(2) "Historically underutilized business" means an entity with its principal place of business in this state that is:

(A) a corporation formed for the purpose of making a profit in which 51 percent or more of all classes of the shares of stock or other equitable securities are owned by one or more economically [~~socially~~] disadvantaged persons who have a proportionate interest and actively participate in the corporation's control, operation, and management;

(B) a sole proprietorship created for the purpose of making a profit that is completely owned, operated, and controlled by an economically [~~a socially~~] disadvantaged person;

(C) a partnership formed for the purpose of making a profit in which 51 percent or more of the assets and interest in the partnership are owned by one or more economically [~~socially~~] disadvantaged persons who have a proportionate interest and actively participate in the partnership's control, operation, and management;

(D) a joint venture in which each entity in the venture is a historically underutilized business, as determined under another paragraph of this subdivision; or

(E) a supplier contract between a historically underutilized business as determined under another paragraph of this subdivision and a prime contractor under which the historically underutilized business is directly involved in the manufacture or distribution of the goods or otherwise warehouses and ships the goods.

(3) "Economically [~~Socially~~] disadvantaged person" means a person who is economically [~~socially~~] disadvantaged because of the person's identification as a member of a certain group, including Black Americans, Hispanic Americans, women, Asian Pacific Americans, and Native Americans, and who has suffered the effects of discriminatory practices or other similar insidious circumstances over which the person has no control.

SECTION 1.22. Section 2161.002, Government Code, is amended by adding Subsection (c) to read as follows:

(c) In adopting rules to administer this chapter, the commission shall adopt rules that are based on the results of the "State of Texas Disparity Study, A Report to the Texas Legislature as Mandated by H.B. 2626, 73rd Legislature, December 1994" (prepared by National Economic Research Associates, Inc.). The commission shall revise the rules in response to the findings of any updates of the study that are prepared on behalf of the state.

SECTION 1.23. Subchapter A, Chapter 2161, Government Code, is amended by adding Sections 2161.003, 2161.004, and 2161.005 to read as follows:

Sec. 2161.003. AGENCY RULES. A state agency, including an institution of higher education, shall adopt the commission's rules under Section 2161.002 as the agency's or institution's own rules. Those rules apply to the agency's construction projects and purchases of goods and services paid for with appropriated money without regard to whether a project or purchase is otherwise subject to this subtitle.

Sec. 2161.004. APPLICABILITY; INTENT. (a) This chapter and rules adopted by the commission under this chapter apply to state agency construction projects and purchases of goods and services that are paid for with appropriated money and made under the authority of this subtitle or other law.

(b) The legislature intends that all qualified businesses have access to compete for business from the state.

(c) Section 2161.003 and Subsections (a) and (b) of this section do not apply to a project or contract subject to Section 201.702, Transportation Code.

Sec. 2161.005. TRANSFER OF FUNDS FOR PURCHASING. If the state auditor reports to the commission under Section 2161.123(d) that a state agency is not complying with Section 2161.123, the commission shall report that fact to the Legislative Budget Board. If the Legislative Budget Board determines that, one year after the date of the state auditor's report to the commission, the agency is still not complying with Section 2161.123, the budget board may, under Section 69, Article XVI, Texas Constitution, direct the emergency transfer of the agency's appropriated funds for making purchases under purchasing authority delegated under

Section 2155.131 or 2155.133 to the appropriate state agency. The amount transferred from the agency's funds to the appropriate agency shall be an amount determined by the Legislative Budget Board.

SECTION 1.24. Section 2161.122, Government Code, is amended by adding a new Subsection (c) and redesignating Subsections (c) and (d) as Subsections (d) and (e) to read as follows:

(c) Each state agency shall report to the commission in accordance with Section 2161.125 the following information with regard to the expenditure of both treasury and nontreasury funds:

(1) the total dollar amount of purchases and payments made under contracts awarded to historically underutilized businesses;

(2) the number of businesses participating in any issuance of state bonds by the agency;

(3) the number of contracts awarded to businesses with regard to the agency's acquisition, construction, or equipping of a facility or implementation of a program; and

(4) the number of bids, proposals, or other applicable expressions of interest made by historically underutilized businesses with regard to the agency's acquisition, construction, or equipping of a facility or implementation of a program.

(d) A state agency participating in a group purchasing program [~~described under Section 2155.139(b)~~] shall send to the commission in the agency's report under Section 2161.121 a separate list of purchases from historically underutilized businesses that are made through the group purchasing program, including the dollar amount of each purchase allocated to the reporting agency.

(e) [~~(d)~~] A state agency's report is a record of the agency's purchases for which the agency selected the vendor. If the vendor was selected by the commission as part of its state contract program, the commission shall include the purchase in the commission's report of its own purchases unless the commission made a sole source purchase for the agency under Section 2155.067. The state agency for which the purchase was made shall report the selection of the vendor on its report as if the agency selected the vendor when the agency drew specifications for goods or services that are proprietary to one vendor.

SECTION 1.25. Section 2161.123, Government Code, is amended by adding Subsections (d), (e), and (f) to read as follows:

(d) The commission and the state auditor shall cooperate to develop procedures to periodically monitor state agency compliance with this section. The state auditor shall report to the commission a state agency that is not complying with this section. In determining whether a state agency is making a good faith effort to comply, the state auditor shall consider whether the agency:

(1) has adopted rules under Section 2161.003;

(2) has used the commission's directory under Section 2161.064 and other resources to identify historically underutilized businesses that are able and available to contract with the agency;

(3) made good faith, timely efforts to contact identified historically underutilized businesses regarding contracting opportunities; and

(4) conducted its procurement program in accordance with the good faith effort methodology set out in commission rules.

(e) In conducting an audit of an agency's compliance with this section or an agency's making of a good faith effort to implement the plan adopted under this

section, the state auditor shall not consider the success or failure of the agency to contract with historically underutilized businesses in any specific quantity. The state auditor's review shall be restricted to the agency's procedural compliance with Subsection (d).

(f) If the state auditor reports to the commission that a state agency is not complying with this section, the commission shall assist the agency in complying.

SECTION 1.26. Section 2161.181, Government Code, is amended to read as follows:

Sec. 2161.181. GOALS FOR PURCHASES OF GOODS AND SERVICES. A state agency, including the commission, shall make a good faith effort to increase the [~~assist historically underutilized businesses to receive not less than 30 percent of the total value of all~~] contract awards for the purchase of goods or services that the agency expects to make during a fiscal year to historically underutilized businesses based on rules adopted by the commission to implement the disparity study described by Section 2161.002(c).

SECTION 1.27. Subsection (a), Section 2161.182, Government Code, is amended to read as follows:

(a) A state agency that contracts for a construction project, including a project under Section 2166.003, shall make a good faith effort to increase the construction contract awards [~~assist historically underutilized businesses to receive not less than 30 percent of the total value of each construction contract award~~] that the agency expects to make during a fiscal year to historically underutilized businesses based on rules adopted by the commission to implement the disparity study described by Section 2161.002(c).

SECTION 1.28. Subsection (c), Section 2165.104, Government Code, is amended to read as follows:

(c) To the extent possible without sacrificing critical public or client services, the commission may not allocate usable office space, as defined by the commission, to a state agency under Article I, [~~or~~] II, V, VI, VII, or VIII of the General Appropriations Act or to the Texas Higher Education Coordinating Board, the Texas Education Agency, the State Board for Educator Certification, the Telecommunications Infrastructure Fund Board, or the Office of Court Administration of the Texas Judicial System in an amount that exceeds an average of 153 square feet per agency employee for each agency site. To the extent that any of those agencies allocates its own usable office space, as defined by the commission, the agency shall allocate the space to achieve the required ratio. This subsection does not apply to:

(1) an agency site at which fewer than 16 employees are located;

(2) warehouse space;

(3) laboratory space;

(4) storage space exceeding 1,000 gross square feet;

(5) library space;

(6) space for hearing rooms used to conduct hearings required under the administrative procedure law, Chapter 2001; or

(7) another type of space specified by commission rule, if the commission determines that it is not practical to apply this subsection to that space.

SECTION 1.29. Subchapter A, Chapter 2170, Government Code, is amended by adding Sections 2170.009 and 2170.010 to read as follows:

Sec. 2170.009. PAY TELEPHONES AUTHORIZED. (a) A pay telephone may be located in the capitol complex only with the approval of the commission. The

commission shall collect the revenue from the installation and operation of the pay telephone and deposit it to the credit of the general revenue fund.

(b) In a state-owned or state-leased building or on state-owned land to which Subsection (a) does not apply, a pay telephone may be installed only with the approval of the governing body of the state entity that has charge and control of the building or land. The entity shall collect the revenue from the installation and operation of the pay telephone and deposit it to the credit of the general revenue fund unless the disposition of the revenue is governed by other law.

(c) The commission or other state entity shall account for the revenue collected under this section in the entity's annual report.

Sec. 2170.010. UNLISTED TELEPHONE NUMBERS PROHIBITED. A state agency and its officers and employees may not buy, rent, or pay toll charges for a telephone for which the telephone number is not listed or available from directory assistance to the general public unless the unlisted telephone number is used:

(1) to provide access to computers, telephone system control centers, long-distance networks, elevator control systems, and other tone-controlled devices for which restricted access to the telephone number is justified for security or other purposes;

(2) in narcotics undercover operations;

(3) in the detection of illegal sales of securities; or

(4) in the investigation of motor fuels tax fraud.

SECTION 1.30. Section 2170.051, Government Code, is amended to read as follows:

Sec. 2170.051. MANAGEMENT AND USE OF SYSTEM. (a) The commission shall manage the operation of a system of telecommunications services for all state agencies. Each agency shall identify its particular requirements for telecommunications services and the site at which the services are to be provided.

(b) The commission shall fulfill the telecommunications requirements of each state agency to the extent possible and to the extent that money is appropriated or available for that purpose.

(c) A state agency shall use the consolidated telecommunications system to the fullest extent possible. A state agency may not acquire telecommunications services unless the telecommunications planning group determines that the agency's requirement for telecommunications services cannot be met at a comparable cost by the consolidated telecommunications system.

(d) A state agency may not enter into or renew a contract with a carrier or other provider of telecommunications services without obtaining a waiver from the telecommunications planning group certifying that the requested telecommunications services cannot be provided at a comparable cost on the consolidated telecommunications system. The telecommunications planning group shall evaluate requests for waivers based on cost-effectiveness to the state government as a whole. A waiver may be granted only for a specific period and will automatically expire on the stated expiration date unless an extension is approved by the telecommunications planning group. A contract for telecommunications services obtained under waiver may not extend beyond the expiration date of the waiver. If the telecommunications planning group becomes aware of any state agency receiving telecommunications services without a waiver, the telecommunications planning group shall notify the agency and the comptroller. The state agency shall have 60 days after notification by the telecommunications planning group in which to submit a waiver request to the

telecommunications planning group documenting the agency's reasoning for bypassing the consolidated telecommunications system and otherwise providing all information required by the waiver application form.

SECTION 1.31. Subsection (b), Section 2170.057, Government Code, is amended to read as follows:

(b) The comptroller shall establish in the state treasury a revolving fund account for the administration of this chapter. The account shall be used as a depository for money received from entities served. Receipts attributable to the centralized capitol complex telephone system shall be deposited into the account but separately identified within the account.

SECTION 1.32. Section 2201.002, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The fund may not be used to pay salaries.

SECTION 1.33. Chapter 2203, Government Code, is amended by adding Sections 2203.004 and 2203.005 to read as follows:

Sec. 2203.004. REQUIREMENT TO USE STATE PROPERTY FOR STATE PURPOSES. State property may be used only for state purposes. A person may not entrust state property to a state officer or employee or to any other person if the property is not to be used for state purposes.

Sec. 2203.005. VENDING MACHINES AUTHORIZED. (a) In a state-owned or state-leased building or on state-owned or state-leased property that is not served by a vendor operating under the supervision of the Texas Commission for the Blind, a vending machine may be located in the building or on the property only with the approval of the governing body of the state agency that has charge and control of the building or property. The approval must be recorded in the minutes of a meeting of the governing body.

(b) The state agency shall file with the General Services Commission a copy of all contracts between the state agency and the vendor related to the vending machine and a written description of the location of the vending machine.

(c) All rentals, commissions, or other net revenue the state agency receives in connection with the vending machine shall be accounted for as state money and deposited to the credit of the general revenue fund unless the disposition of the revenue is governed by other law. The state agency shall account for the revenue received under this section in the agency's annual report.

(d) In a state-owned or state-leased building or on state-owned or state-leased property that is served by a vendor operating under the supervision of the Texas Commission for the Blind, a vending machine may be located and operated in the building or on the property only under a joint contract with the owners of the vending machine and the vendor operating under the supervision of the Texas Commission for the Blind.

SECTION 1.34. Subchapter A, Chapter 2204, Government Code, is amended by adding Sections 2204.002 and 2204.003 to read as follows:

Sec. 2204.002. RESTRICTION ON ACQUISITION OF REAL PROPERTY. A state agency, as defined by Section 658.001, may not accept a gift or devise of real property or spend appropriated money to purchase real property without statutory authority or other legislative authorization.

Sec. 2204.003. GIFTS OF REAL PROPERTY TO INSTITUTIONS OF HIGHER EDUCATION. An institution of higher education, as defined by Section 61.003, Education Code, may accept a gift or devise of real property from a

private entity to establish scholarships or professorships or to be held in trust for other educational purposes only if done consistently with rules and regulations adopted by the Texas Higher Education Coordinating Board pursuant to its power to adopt such rules and regulations under Chapter 61, Education Code.

SECTION 1.35. Section 2251.030, Government Code, is amended to read as follows:

Sec. 2251.030. PROMPT OR EARLY PAYMENT DISCOUNT. (a) The intent of the legislature is that a governmental entity should take advantage of an offer for an early payment discount. A state agency shall when possible negotiate a prompt payment discount with a vendor.

(b) A governmental entity may not take an early payment discount a vendor offers unless the governmental entity makes a full payment within the discount period.

(c) If a governmental entity takes an early payment discount later, the unpaid balance accrues interest beginning on the date the discount offer expires.

(d) A state agency, when paying for goods and services purchased under an agreement that includes a prompt or early payment discount, shall submit the necessary payment documents or information to the comptroller sufficiently in advance of the prompt or early payment deadline to allow the comptroller or the agency to pay the vendor in time to obtain the discount.

SECTION 1.36. Section 2252.901, Government Code, is amended to read as follows:

Sec. 2252.901. CONTRACTS WITH FORMER OR RETIRED AGENCY EMPLOYEES. (a) A state agency may not enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with a former or retired employee of the agency before the first anniversary of the last date on which the individual was employed by the agency, if appropriated money will be used to make payments under the contract. This section does not prohibit an agency from entering into a professional services contract with a corporation, firm, or other business entity that employs a former or retired employee of the agency within one year of the employee's leaving the agency, provided that the former or retired employee does not perform services on projects for the corporation, firm, or other business entity that the employee worked on while employed by the agency.

(b) A state agency that contracts at any time with a retired agency employee to perform services substantially similar to the services the retiree performed for the agency during the last 12 months of service before retirement may not make payments under the contract from any source of revenue at an annualized rate that exceeds the lesser of:

(1) the rate of compensation the retiree received from the state during the last 12 months of service before retirement; or

(2) $60,000.

(c) [~~(b)~~] The contract payment limitation provided by Subsection (b) [~~(a)~~] does not apply during the first six months a retiree performs services under a contract after retirement, except that if a retiree performs services under the contract for more than six months, the limitation applies to the entire term of the contract.

(d) [~~(c)~~] In this section:

(1) "Employment contract" includes a personal services contract regardless of whether the performance of the contract involves the traditional relationship of employer and employee. The term does not apply to an at-will employment relationship that involves the traditional relationship of employer and employee.

(2) "Retired agency employee" means a person:

(A) whose last state service before retirement was for the state agency with which the retiree contracts to perform services; and

(B) who is a retiree of:

(i) the employee class of membership of the Employees Retirement System of Texas; or

(ii) the Teacher Retirement System of Texas, the majority of whose service was credited in that system in a position with a state agency.

(3) [~~(2)~~] "State agency" includes a "public senior college or university," as that term is defined by Section 61.003, Education Code.

SECTION 1.37. Subchapter A, Chapter 2254, Government Code, is amended by adding Section 2254.0031 to read as follows:

Sec. 2254.0031. INDEMNIFICATION. A state governmental entity may require a contractor selected under this subchapter to indemnify or hold harmless the state from claims and liabilities resulting from the negligent acts or omissions of the contractor or persons employed by the contractor. A state governmental entity may not require a contractor to indemnify or hold harmless the state for claims or liabilities resulting from the negligent acts or omissions of the state governmental entity or its employees.

SECTION 1.38. Subchapter B, Chapter 205, Labor Code, is amended by adding Section 205.019 to read as follows:

Sec. 205.019. REIMBURSEMENT FROM NON-TREASURY FUNDS. (a) A branch, department, or other instrumentality of this state that reimburses the commission with funds that are held outside the state treasury shall reimburse the commission by writing a check to the commission for deposit into the appropriate unemployment compensation account. A deposit under this section shall be made not later than the 30th day after the date the instrumentality receives the commission's statement of amounts due.

(b) The commission shall send a copy of each statement of amounts due from a branch, department, or other instrumentality of this state that reimburses the commission with funds that are held outside the state treasury to the comptroller and the state auditor.

(c) A branch, department, or other instrumentality affected by this section may allocate appropriate funds to a revolving account on its books to receive contributions from funds other than general revenue funds, based on an assessment it determines to be appropriate for the purpose of reimbursing the appropriate unemployment compensation account for benefits paid.

(d) The state auditor shall review affected entities for compliance with this section.

SECTION 1.39. The chapter heading to Chapter 506, Labor Code, is amended to read as follows:

CHAPTER 506. MISCELLANEOUS PROVISIONS APPLICABLE TO GOVERNMENT EMPLOYEES [~~PAYMENT OF CERTAIN JUDGMENTS~~]

SECTION 1.40. Chapter 506, Labor Code, is amended by adding Section 506.002 to read as follows:

Sec. 506.002. REIMBURSEMENT FROM NON-TREASURY FUNDS. (a) An agency or other instrumentality of state government that, with funds that are held outside the state treasury, reimburses the general revenue fund for workers'

compensation payments made out of the general revenue fund to former or current employees of the agency or other instrumentality shall reimburse the general revenue fund by writing a check to the comptroller:

(1) for deposit into the appropriate account in the general revenue fund; and

(2) not later than 30 days after receiving the statement of amounts due.

(b) The workers' compensation division of the office of the attorney general shall send to the comptroller and the state auditor a copy of each statement of amounts due from an agency or other instrumentality of state government that, with funds that are held outside the state treasury, reimburses the general revenue fund for workers' compensation payments made out of the general revenue fund.

(c) An agency or other instrumentality of state government affected by this section may allocate appropriate funds to a revolving account on its books to receive contributions from funds other than general revenue funds, based on an assessment it determines to be appropriate for the purpose of reimbursing the general revenue fund for the workers' compensation payments made to its current or former employees.

(d) The state auditor shall review affected entities for compliance with this section.

SECTION 1.41. Subchapter D, Chapter 11, Natural Resources Code, is amended by adding Section 11.0791 to read as follows:

Sec. 11.0791. OTHER PROVISIONS REGARDING ACCESS TO STATE LANDS. When a state governmental entity sells state land, the entity shall require that the state have the right of ingress and egress to remaining state land in the immediate area by an easement to a public thoroughfare.

SECTION 1.42. Subchapter D, Chapter 11, Natural Resources Code, is amended by adding Section 11.083 to read as follows:

Sec. 11.083. RETENTION OF MINERAL RIGHTS. The state shall retain the mineral rights to state land that is sold unless it is impractical to do so.

SECTION 1.43. Section 31.401, Natural Resources Code, is amended to read as follows:

Sec. 31.401. NATURAL GAS ACQUISITION CONTRACTS. (a) The land office shall review and must approve any contract entered into by a state agency for the acquisition of an annual average of 100 MCF per day or more of natural gas used to meet its [~~in the production of~~] energy requirements.

(b) Before approving a contract described by Subsection (a) of this section, the land office shall ensure that the agency, to meet its energy requirements, is using, to the greatest extent practical, natural gas produced from land leased from:

(1) the school land board;

(2) a board for lease other than the Board for Lease of University Lands; or

(3) the surface owner of Relinquishment Act land.

(c) If the land office is able to substitute a contract using in-kind royalty gas from state-owned lands or using other gas for a contract under which a state agency acquires or proposes to acquire its natural gas supplies, the commissioner shall inform the comptroller each month of the amount of savings attributable to the substitution.

(d) In this section, "state agency" has the meaning assigned by Subchapter A, Chapter 572, Government Code.

SECTION 1.44. Subsection (d), Section 403.273, Government Code, is repealed.

SECTION 1.45. Subsection (c), Section 2165.104, Government Code, as amended by this Act, does not apply to the Texas Higher Education Coordinating

Board or the State Board for Educator Certification until the expiration of all leases under which the board occupies office space on the effective date of this Act.

SECTION 1.46. This Act does not affect the authority of an institution 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 1.47. This section provides, for information purposes only, a derivation table for the 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 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. 101.027(a), Civil Practice and Remedies Code | Sec. 61 |
| Sec. 106.001(c), Civil Practice and Remedies Code | Sec. 124.11 |
| Sec. 306.007 | Sec. 40.2 |
| Sec. 321.013(c) | Sec. 176, 124.8 (part) |
| Sec. 321.014(c) | Sec. 91 |
| Sec. 325.011(9)(b) | Sec. 124.10 |
| Sec. 403.097 | Sec. 32.2 |
| Sec. 403.245(b) | Sec. 126 |
| Sec. 771.008(d) | Sec. 78 |
| Sec. 811.001(7) | Sec. 181, last sent. |
| Sec. 2001.039 | Sec. 167 |
| Sec. 2052.304 | Sec. 40.3 |
| Sec. 2054.003(6) | Sec. 43.1.a |
| Sec. 2054.121 | Sec. 43.5 |
| Sec. 2054.122 | Sec. 156 |
| Sec. 2101.0377 | Sec. 70 |
| Sec. 2155.084 | Sec. 135, 1st 2 par. |
| Sec. 2155.132(a) | Sec. 90 |
| Sec. 2155.268 | Sec. 56 |
| Sec. 2155.4441 | Sec. 53 |
| Sec. 2158.0031 | Sec. 20.3, 1st sent. |
| Sec. 2161.001(2), (3) | Sec. 124.3 |
| Sec. 2161.002(c) | Sec. 124.5 |
| Sec. 2161.003 | Sec. 124.2, 124.5 |
| Sec. 2161.004 | Sec. 124.1, 124.2 |
| Sec. 2161.005 | Sec. 124.9 |
| Sec. 2161.122(c) | Sec. 124.6, 124.7 |
| Sec. 2161.123(d), (e) | Sec. 124.8, 124.9 |
| Sec. 2161.181 | Sec. 124.5 |
| Sec. 2161.182(a) | Sec. 124.5 |
| Sec. 2165.104(c) | Sec. 154, except last sent. |
| Sec. 2170.009 | Sec. 111 (most) |
| Sec. 2170.010 | Sec. 141 |

| | |
|---|---|
| Secs. 2170.051(c), (d) | Sec. 140 |
| Sec. 2170.057(b) | Sec. 139, 2nd par. |
| Sec. 2201.002(c) | Sec. 150.2 |
| Sec. 2203.004 | Sec. 149 |
| Sec. 2203.005 | Sec. 110 (most) |
| Sec. 2204.002 | Sec. 135, 3rd par., 1st sent. |
| Sec. 2204.003 | Sec. 135, 3rd par., 2nd sent. |
| Sec. 2251.030 | Sec. 79 |
| Sec. 2252.901 | Sec. 52 |
| Sec. 2254.0031 | Sec. 51 |
| Sec. 205.019, Labor Code | Sec. 80 (part) |
| Sec. 506.002, Labor Code | Sec. 81 (part) |
| Sec. 11.0791, Natural Resources Code | Sec. 148, 1st par. |
| Sec. 11.083, Natural Resources Code | Sec. 147 |
| Sec. 31.401, Natural Resources Code | Sec. 144 (part) |

ARTICLE 2. CERTAIN OTHER PROVISIONS
RELATED TO STATE AGENCY CONTRACTING
WITH HISTORICALLY UNDERUTILIZED BUSINESSES

SECTION 2.01. Subsection (g), Section 2155.074, Government Code, as added by Chapter 508, Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

(g) A state agency shall post in the business daily either the entire bid or proposal solicitation package or a notice that includes all information necessary to make a successful bid, proposal, or other applicable expression of interest for the procurement contract, including at a minimum the following information for each procurement that the state agency will make that is estimated to exceed $25,000 in value:

(1) a brief description of the goods or services to be procured and any applicable state product or service codes for the goods and services;

(2) the last date on which bids, proposals, or other applicable expressions of interest will be accepted;

(3) the estimated quantity of goods or services to be procured;

(4) if applicable, the previous price paid by the state agency for the same or similar goods or services;

(5) the estimated date on which the goods or services to be procured will be needed; and

(6) the name, business mailing address, and business telephone number of the state agency employee a person may contact to inquire about [~~obtain~~] all necessary information related to making a bid or proposal or other applicable expression of interest for the procurement contract.

SECTION 2.02. Subchapter A, Chapter 2161, Government Code, is amended by adding Section 2161.0015 to read as follows:

Sec. 2161.0015. DETERMINING SIZE STANDARDS FOR HISTORICALLY UNDERUTILIZED BUSINESSES. The commission may establish size standards that a business may not exceed if it is to be considered a historically underutilized business under this chapter. In determining the size standards, the commission shall determine the size at which a business should be considered sufficiently large that the business probably does not significantly suffer from the effects of past discriminatory practices.

SECTION 2.03. Subsections (b) and (c), Section 2161.061, Government Code, are amended to read as follows:

(b) As one [~~part~~] of its certification procedures, the commission may:

(1) approve the [~~another~~] certification program of one or more local governments in this state that certify [~~certifies~~] historically underutilized businesses, minority business enterprises, women's business enterprises, or disadvantaged business enterprises under substantially the same definition, to the extent applicable, used by Section 2161.001; and

(2) certify a business certified under the local government program as a historically underutilized business under this chapter.

(c) To maximize the number of certified historically underutilized businesses, the commission shall enter into agreements with local governments in this state that conduct certification programs described by Subsection (b). The agreements must take effect immediately and:

(1) allow for automatic certification of businesses certified under the local government program;

(2) provide for the efficient updating of the commission database containing information about historically underutilized businesses and potential historically underutilized businesses; and

(3) provide for a method by which the commission may efficiently communicate with businesses certified under the local government program and provide those businesses with information about the state historically underutilized business program. [~~A municipality, in certifying historically underutilized businesses, may adopt the certification program of the commission, of the federal Small Business Administration, or of another political subdivision or other governmental entity.~~]

SECTION 2.04. Section 2161.062, Government Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) The commission shall send historically underutilized businesses an orientation package on certification or recertification. The package shall include:

(1) a certificate issued in the historically underutilized business's name;

(2) a description of the significance and value of certification;

(3) a list of state purchasing personnel;

(4) information regarding electronic commerce opportunities;

(5) information regarding the Texas Marketplace website; and

(6) additional information about the state procurement process.

(e) A state agency with a biennial budget that exceeds $10 million shall designate a staff member to serve as the historically underutilized businesses coordinator for the agency during the fiscal year. The procurement director may serve as the coordinator. In agencies that employ a historically underutilized businesses coordinator, the position of coordinator, within the agency's structure, must be at least equal to the position of procurement director. In addition to any other responsibilities, the coordinator shall:

(1) coordinate training programs for the recruitment and retention of historically underutilized businesses;

(2) report required information to the commission; and

(3) match historically underutilized businesses with key staff within the agency.

SECTION 2.05. Subsection (b), Section 2161.063, Government Code, is amended to read as follows:

(b) The commission shall assist the Texas Department of Economic Development [~~Commerce~~] in performing the department's duties under Section 481.0068 [~~481.103~~].

SECTION 2.06. Subsection (b), Section 2161.064, Government Code, is amended to read as follows:

(b) The commission at least semiannually shall update the directory and provide access to the directory electronically or in another form [~~a copy of the directory~~] to each state agency.

SECTION 2.07. Subsections (a) and (e), Section 2161.121, Government Code, are amended to read as follows:

(a) The commission shall prepare a consolidated report that:

(1) includes the number and dollar amount of contracts awarded and paid to historically underutilized businesses certified by the commission; [~~and~~]

(2) analyzes the relative level of opportunity for historically underutilized businesses for various categories of acquired goods and services; and

(3) tracks, by vendor identification number and, to the extent allowed by federal law, by social security number, the graduation rates for historically underutilized businesses that grew to exceed the size standards determined by the commission.

(e) The commission shall send on October 15 of each year a report on the preceding fiscal year to the presiding officer of each house of the legislature[~~, the members of the legislature,~~] and the joint committee.

SECTION 2.08. Subchapter B, Chapter 2161, Government Code, is amended by adding Sections 2161.065 and 2161.066 to read as follows:

Sec. 2161.065. MENTOR-PROTEGE PROGRAM. (a) The commission shall design a mentor-protege program to foster long-term relationships between prime contractors and historically underutilized businesses and to increase the ability of historically underutilized businesses to contract with the state or to receive subcontracts under a state contract. Each state agency with a biennial appropriation that exceeds $10 million shall implement the program designed by the commission.

(b) Participation in the program must be voluntary for both the contractor and the historically underutilized business subcontractor.

Sec. 2161.066. HISTORICALLY UNDERUTILIZED BUSINESS FORUMS. (a) The commission shall design a program of forums in which historically underutilized businesses are invited by state agencies to deliver technical and business presentations that demonstrate their capability to do business with the agency:

(1) to senior managers and procurement personnel at state agencies that acquire goods and services of a type supplied by the historically underutilized businesses; and

(2) to contractors with the state who may be subcontracting for goods and services of a type supplied by the historically underutilized businesses.

(b) The forums shall be held at state agency offices.

(c) Each state agency with a biennial appropriation that exceeds $10 million shall participate in the program by sending senior managers and procurement personnel to attend relevant presentations and by informing the agency's contractors about presentations that may be relevant to anticipated subcontracting opportunities.

(d) Each state agency that has a historically underutilized businesses coordinator shall:

(1) design its own program and model the program to the extent appropriate on the program developed by the commission under this section; and

(2) sponsor presentations by historically underutilized businesses at the agency.

(e) The commission and each state agency that has a historically underutilized businesses coordinator shall aggressively identify and notify individual historically underutilized businesses regarding opportunities to make a presentation regarding the types of goods and services supplied by the historically underutilized business and shall advertise in appropriate trade publications that target historically underutilized businesses regarding opportunities to make a presentation.

SECTION 2.09. Subchapter C, Chapter 2161, Government Code, is amended by adding Sections 2161.126 and 2161.127 to read as follows:

Sec. 2161.126. EDUCATION AND OUTREACH BY COMMISSION. Before September 1 of each year, the commission shall report to the governor, the lieutenant governor, and the speaker of the house of representatives on the education and training efforts that the commission has made toward historically underutilized businesses. The report must include the following as related to historically underutilized businesses:

(1) the commission's vision, mission, and philosophy;

(2) marketing materials and other educational materials distributed by the commission;

(3) the commission's policy regarding education, outreach, and dissemination of information;

(4) goals that the commission has attained during the fiscal year;

(5) the commission's goals, objectives, and expected outcome measures for each outreach and education event; and

(6) the commission's planned future initiatives on education and outreach.

Sec. 2161.127. LEGISLATIVE APPROPRIATIONS REQUESTS. Each state agency must include as part of its legislative appropriations request a detailed report for consideration by the budget committees of the legislature that shows the extent to which the agency complied with this chapter and rules of the commission adopted under this chapter during the two calendar years preceding the calendar year in which the request is submitted. To the extent the state agency did not comply, the report must demonstrate the reasons for that fact. The extent to which a state agency complies with this chapter and rules of the commission adopted under this chapter is considered a performance measure for purposes of the appropriations process.

SECTION 2.10. Chapter 2161, Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. SUBCONTRACTING

Sec. 2161.251. APPLICABILITY. (a) This subchapter applies to all contracts entered into by a state agency with an expected value of $100,000 or more, including:

(1) contracts for the acquisition of a good or service; and

(2) contracts for or related to the construction of a public building, road, or other public work.

(b) This subchapter applies to the contract without regard to:

(1) whether the contract is otherwise subject to this subtitle; or

(2) the source of funds for the contract, except that to the extent federal funds are used to pay for the contract, this subchapter does not apply if federal law prohibits the application of this subchapter in relation to the expenditure of federal funds.

Sec. 2161.252. AGENCY DETERMINATION REGARDING SUBCONTRACTING OPPORTUNITIES; BUSINESS SUBCONTRACTING PLAN. (a) Each state agency that considers entering into a contract with an expected value of $100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest for the contract, determine whether there will be subcontracting opportunities under the contract. If the state agency determines that there is that probability, the agency shall require that each bid, proposal, offer, or other applicable expression of interest for the contract include a historically underutilized business subcontracting plan.

(b) When a state agency requires a historically underutilized business subcontracting plan under Subsection (a), a bid, proposal, offer, or other applicable expression of interest for the contract must contain a plan to be considered responsive.

Sec. 2161.253. GOOD FAITH COMPLIANCE WITH BUSINESS SUBCONTRACTING PLAN. (a) When a state agency requires a historically underutilized business subcontracting plan under Section 2161.252, the awarded contract shall contain, as a provision of the contract that must be fulfilled, the plan that the contractor submitted in its bid, proposal, offer, or other applicable expression of interest for the contract. The contractor shall make good faith efforts to implement the plan.

(b) To the extent that subcontracts are not contracted for as originally submitted in the historically underutilized business subcontracting plan, the contractor shall report to the state agency all the circumstances that explain that fact and describe the good faith efforts made to find and subcontract with another historically underutilized business.

(c) The state agency shall audit the contractor's compliance with the historically underutilized business subcontracting plan. In determining whether the contractor made the required good faith effort, the agency may not consider the success or failure of the contractor to subcontract with historically underutilized businesses in any specific quantity. The agency's determination is restricted to considering factors indicating good faith.

(d) If a determination is made that the contractor failed to implement the plan in good faith, the agency, in addition to any other remedies, may bar the contractor from further contracting opportunities with the agency.

(e) The commission shall adopt rules to administer this subchapter.

SECTION 2.11. Subchapter F, Chapter 2161, Government Code, as added by this Act, applies only to subcontracting under a contract entered into by a state agency for which the request for bids, proposals, offers, or other applicable expressions of interest is disseminated on or after April 1, 2000.

ARTICLE 3. PROVISIONS RELATING TO STATE AGENCY CONTINGENCY FEE CONTRACTS FOR LEGAL SERVICES

SECTION 3.01. (a) The legislature finds that:

(1) a payment to a private attorney or law firm under a contingent fee contract for legal services entered into by a state governmental entity constitutes compensation paid to a public contractor for which the legislature must provide by law under Section 44, Article III, Texas Constitution; and

(2) funds recovered by a state governmental entity in litigation or in settlement of a matter that could have resulted in litigation are state funds that must be deposited in the state treasury and made subject to the appropriations process.

(b) It is the policy of this state that all funds recovered by a state governmental entity from an opposing party in litigation or in settlement of a matter that could have resulted in litigation, including funds designated as damages, amounts adjudged or awarded, attorney's fees, costs, interest, settlement proceeds, or expenses, are the property of the state governmental entity that must be deposited in the manner that public funds of the entity must be deposited. Legal fees and expenses may be paid from the recovered funds under a contingent fee contract for legal services only after the funds have been appropriately deposited and only in accordance with applicable law.

SECTION 3.02. Subchapter F, Chapter 404, Government Code, is amended by adding Section 404.097 to read as follows:

Sec. 404.097. DEPOSIT OF FUNDS RECOVERED BY LITIGATION OR SETTLEMENT. (a) Notwithstanding Section 404.093, this section applies by its terms to each state governmental entity.

(b) In this section, "contingent fee contract" and "state governmental entity" have the meanings assigned by Section 2254.101.

(c) All funds recovered by a state governmental entity in litigation or in settlement of a matter that could have resulted in litigation, including funds designated as damages, amounts adjudged or awarded, attorney's fees, costs, interest, settlement proceeds, or expenses, are public funds of the state or the state governmental entity and shall be deposited in the state treasury to the credit of the appropriate fund or account.

(d) Legal fees and expenses may be paid from the recovered funds under a contingent fee contract for legal services only:

(1) after the funds are deposited in accordance with this section; and

(2) in accordance with Subchapter C, Chapter 2254.

SECTION 3.03. Chapter 2254, Government Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. CONTINGENT FEE CONTRACT FOR LEGAL SERVICES

Sec. 2254.101. DEFINITIONS. In this subchapter:

(1) "Contingent fee" means that part of a fee for legal services, under a contingent fee contract, the amount or payment of which is contingent on the outcome of the matter for which the services were obtained.

(2) "Contingent fee contract" means a contract for legal services under which the amount or the payment of the fee for the services is contingent in whole or in part on the outcome of the matter for which the services were obtained.

(3) "State governmental entity":

(A) means the state or a board, commission, department, office, or other agency in the executive branch of state government created under the constitution or a statute of the state, including an institution of higher education as defined by Section 61.003, Education Code;

(B) includes the state when a state officer is bringing a parens patriae proceeding in the name of the state; and

(C) does not include a state agency or state officer acting as a receiver, special deputy receiver, liquidator, or liquidating agent in connection with the administration of the assets of an insolvent entity under Article 21.28, Insurance Code, or Chapter 36, 66, 96, or 126, Finance Code.

Sec. 2254.102. APPLICABILITY. (a) This subchapter applies only to a contingent fee contract for legal services entered into by a state governmental entity.

(b) The legislature by this subchapter is providing, in accordance with Section 44, Article III, Texas Constitution, for the manner in which and the situations under which a state governmental entity may compensate a public contractor under a contingent fee contract for legal services.

Sec. 2254.103. CONTRACT APPROVAL; SIGNATURE. (a) A state governmental entity that has authority to enter into a contract for legal services in its own name may enter into a contingent fee contract for legal services only if:

(1) the governing body of the state governmental entity approves the contract and the approved contract is signed by the presiding officer of the governing body; or

(2) for an entity that is not governed by a multimember governing body, the elected or appointed officer who governs the entity approves and signs the contract.

(b) The attorney general may enter into a contingent fee contract for legal services in the name of the state in relation to a matter that has been referred to the attorney general under law by another state governmental entity only if the other state governmental entity approves and signs the contract in accordance with Subsection (a).

(c) A state governmental entity, including the state, may enter into a contingent fee contract for legal services that is not described by Subsection (a) or (b) only if the governor approves and signs the contract.

(d) Before approving the contract, the governing body, elected or appointed officer, or governor, as appropriate, must find that:

(1) there is a substantial need for the legal services;

(2) the legal services cannot be adequately performed by the attorneys and supporting personnel of the state governmental entity or by the attorneys and supporting personnel of another state governmental entity; and

(3) the legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of the matter for which the services will be obtained or because the state governmental entity does not have appropriated funds available to pay the estimated amounts required under a contract providing only for the payment of hourly fees.

(e) Before entering into a contingent fee contract for legal services in which the estimated amount that may be recovered exceeds $100,000, a state governmental entity that proposes to enter into the contract in its own name or in the name of the state must also notify the Legislative Budget Board that the entity proposes to enter into the contract, send the board copies of the proposed contract, and send the board information demonstrating that the conditions required by Subsection (d)(3) exist. If the state governmental entity finds under Subsection (d)(3) that the state governmental entity does not have appropriated funds available to pay the estimated amounts required under a contract for the legal services providing only for the payment of hourly fees, the state governmental entity may not enter into the proposed contract in its own name or in the name of the state unless the Legislative Budget Board finds that the state governmental entity's finding with regard to available appropriated funds is correct.

(f) A contingent fee contract for legal services that is subject to Subsection (e) and requires a finding by the Legislative Budget Board is void unless the board has made the finding required by Subsection (e).

Sec. 2254.104. TIME AND EXPENSE RECORDS REQUIRED; FINAL STATEMENT. (a) The contract must require that the contracting attorney or law firm keep current and complete written time and expense records that describe in detail the time and money spent each day in performing the contract.

(b) The contracting attorney or law firm shall permit the governing body or governing officer of the state governmental entity, the attorney general, and the state auditor each to inspect or obtain copies of the time and expense records at any time on request.

(c) On conclusion of the matter for which legal services were obtained, the contracting attorney or law firm shall provide the contracting state governmental entity with a complete written statement that describes the outcome of the matter, states the amount of any recovery, shows the contracting attorney's or law firm's computation of the amount of the contingent fee, and contains the final complete time and expense records required by Subsection (a). The complete written statement required by this subsection is public information under Chapter 552 and may not be withheld from a requestor under that chapter under Section 552.103 or any other exception from required disclosure.

(d) This subsection does not apply to the complete written statement required by Subsection (c). All time and expense records required under this section are public information subject to required public disclosure under Chapter 552. Information in the records may be withheld from a member of the public under Section 552.103 only if, in addition to meeting the requirements of Section 552.103, the chief legal officer or employee of the state governmental entity determines that withholding the information is necessary to protect the entity's strategy or position in pending or reasonably anticipated litigation. Information withheld from public disclosure under this subsection shall be segregated from information that is subject to required public disclosure.

Sec. 2254.105. CERTAIN GENERAL CONTRACT REQUIREMENTS. The contract must:

(1) provide for the method by which the contingent fee is computed;

(2) state the differences, if any, in the method by which the contingent fee is computed if the matter is settled, tried, or tried and appealed;

(3) state how litigation and other expenses will be paid and, if reimbursement of any expense is contingent on the outcome of the matter or reimbursable from the amount recovered in the matter, state whether the amount recovered for purposes of the contingent fee computation is considered to be the amount obtained before or after expenses are deducted;

(4) state that any subcontracted legal or support services performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm is an expense subject to reimbursement only in accordance with this subchapter; and

(5) state that the amount of the contingent fee and reimbursement of expenses under the contract will be paid and limited in accordance with this subchapter.

Sec. 2254.106. CONTRACT REQUIREMENTS: COMPUTATION OF CONTINGENT FEE; REIMBURSEMENT OF EXPENSES. (a) The contract must establish the reasonable hourly rate for work performed by an attorney, law clerk, or paralegal who will perform legal or support services under the contract based on the reasonable and customary rate in the relevant locality for the type of work performed

and on the relevant experience, demonstrated ability, and standard hourly billing rate, if any, of the person performing the work. The contract may establish the reasonable hourly rate for one or more persons by name and may establish a rate schedule for work performed by unnamed persons. The highest hourly rate for a named person or under a rate schedule may not exceed $1,000 an hour. This subsection applies to subcontracted work performed by an attorney, law clerk, or paralegal who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm as well as to work performed by a contracting attorney or by a partner, shareholder, or employee of a contracting attorney or law firm.

(b) The contract must establish a base fee to be computed as follows. For each attorney, law clerk, or paralegal who is a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm, multiply the number of hours the attorney, law clerk, or paralegal works in providing legal or support services under the contract times the reasonable hourly rate for the work performed by that attorney, law clerk, or paralegal. Add the resulting amounts to obtain the base fee. The computation of the base fee may not include hours or costs attributable to work performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm.

(c) Subject to Subsection (d), the contingent fee is computed by multiplying the base fee by a multiplier. The contract must establish a reasonable multiplier based on any expected difficulties in performing the contract, the amount of expenses expected to be risked by the contractor, the expected risk of no recovery, and any expected long delay in recovery. The multiplier may not exceed four without prior approval by the legislature.

(d) In addition to establishing the method of computing the fee under Subsections (a), (b), and (c), the contract must limit the amount of the contingent fee to a stated percentage of the amount recovered. The contract may state different percentage limitations for different ranges of possible recoveries and different percentage limitations in the event the matter is settled, tried, or tried and appealed. The percentage limitation may not exceed 35 percent without prior approval by the legislature. The contract must state that the amount of the contingent fee will not exceed the lesser of the stated percentage of the amount recovered or the amount computed under Subsections (a), (b), and (c).

(e) The contract also may:

(1) limit the amount of expenses that may be reimbursed; and

(2) provide that the amount or payment of only part of the fee is contingent on the outcome of the matter for which the services were obtained, with the amount and payment of the remainder of the fee payable on a regular hourly rate basis without regard to the outcome of the matter.

(f) Except as provided by Section 2254.107, this section does not apply to a contingent fee contract for legal services:

(1) in which the expected amount to be recovered and the actual amount recovered do not exceed $100,000; or

(2) under which a series of recoveries is contemplated and the amount of each individual recovery is not expected to and does not exceed $100,000.

(g) This section applies to a contract described by Subsection (f) for each individual recovery under the contract that actually exceeds $100,000, and the contract must provide for computing the fee in accordance with this section for each individual recovery that actually exceeds $100,000.

Sec. 2254.107. MIXED HOURLY AND CONTINGENT FEE CONTRACTS; REIMBURSEMENT FOR SUBCONTRACTED WORK. (a) This section applies only to a contingent fee contract:

(1) under which the amount or payment of only part of the fee is contingent on the outcome of the matter for which the services were obtained, with the amount and payment of the remainder of the fee payable on a regular hourly rate basis without regard to the outcome of the matter; or

(2) under which reimbursable expenses are incurred for subcontracted legal or support services performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm.

(b) Sections 2254.106(a) and (e) apply to the contract without regard to the expected or actual amount of recovery under the contract.

(c) The limitations prescribed by Section 2254.106 on the amount of the contingent fee apply to the entire amount of the fee under the contingent fee contract, including the part of the fee the amount and payment of which is not contingent on the outcome of the matter.

(d) The limitations prescribed by Section 2254.108 on payment of the fee apply only to payment of the contingent portion of the fee.

Sec. 2254.108. FEE PAYMENT AND EXPENSE REIMBURSEMENT. (a) Except as provided by Subsection (b), a contingent fee and a reimbursement of an expense under a contract with a state governmental entity is payable only from funds the legislature specifically appropriates to pay the fee or reimburse the expense. An appropriation to pay the fee or reimburse the expense must specifically describe the individual contract, or the class of contracts classified by subject matter, on account of which the fee is payable or expense is reimbursable. A general reference to contingent fee contracts for legal services or to contracts subject to this subchapter or a similar general description is not a sufficient description for purposes of this subsection.

(b) If the legislature has not specifically appropriated funds for paying the fee or reimbursing the expense, a state governmental entity may pay the fee or reimburse the expense from other available funds only if:

(1) the legislature is not in session; and

(2) the Legislative Budget Board gives its prior approval for that payment or reimbursement under Section 69, Article XVI, Texas Constitution, after examining the statement required under Section 2254.104(c) and determining that the requested payment and the contract under which payment is requested meet all the requirements of this subchapter.

(c) A payment or reimbursement under the contract may not be made until:

(1) final and unappealable arrangements have been made for depositing all recovered funds to the credit of the appropriate fund or account in the state treasury; and

(2) the state governmental entity and the state auditor have received from the contracting attorney or law firm the statement required under Section 2254.104(c).

(d) Litigation and other expenses payable under the contract, including expenses attributable to attorney, paralegal, accountant, expert, or other professional work performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm, may be reimbursed only if the state governmental entity and the state auditor determine that the expenses were reasonable, proper, necessary, actually incurred on behalf of the state governmental entity, and paid for by the contracting attorney or law firm. The contingent fee may not be paid

until the state auditor has reviewed the relevant time and expense records and verified that the hours of work on which the fee computation is based were actually worked in performing reasonable and necessary services for the state governmental entity under the contract.

Sec. 2254.109. EFFECT ON OTHER LAW. (a) This subchapter does not limit the right of a state governmental entity to recover fees and expenses from opposing parties under other law.

(b) Compliance with this subchapter does not relieve a contracting attorney or law firm of an obligation or responsibility under other law, including under the Texas Disciplinary Rules of Professional Conduct.

(c) A state officer, employee, or governing body, including the attorney general, may not waive the requirements of this subchapter or prejudice the interests of the state under this subchapter. This subchapter does not waive the state's sovereign immunity from suit or its immunity from suit in federal court under the Eleventh Amendment to the federal constitution.

SECTION 3.04. The changes in law made by this article apply only to a contract entered into on or after September 1, 1999.

ARTICLE 4. EFFECTIVE DATE; EMERGENCY

SECTION 4.01. This Act takes effect September 1, 1999.

SECTION 4.02. 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 2553**

Senator Bivins submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 2553** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

| | |
|---|---|
| BIVINS | HOCHBERG |
| SIBLEY | LENGEFELD |
| JACKSON | SMITH |
| CAIN | OLIVO |
| 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 766

Senator Brown submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 766** 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.

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|---|---|
| BROWN | ALLEN |
| ARMBRISTER | CHISUM |
| FRASER | GALLEGO |
| LUCIO | MAXEY |
| | ZBRANEK |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to the issuance of certain permits for the emission of air contaminants.

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

SECTION 1. Subdivision (9), Section 382.003, Health and Safety Code, is amended to read as follows:

(9) "Modification of existing facility" means any physical change in, or change in the method of operation of, a facility in a manner that increases the amount of any air contaminant emitted by the facility into the atmosphere or that results in the emission of any air contaminant not previously emitted. The term does not include:

(A) insignificant increases in the amount of any air contaminant emitted that is authorized by one or more commission exemptions;

(B) insignificant increases at a permitted facility;

(C) maintenance or replacement of equipment components that do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted into the atmosphere;

(D) an increase in the annual hours of operation unless the existing facility has received a preconstruction permit or has been exempted, pursuant to Section 382.057, from preconstruction permit requirements;

(E) a physical change in, or change in the method of operation of, a facility that does not result in a net increase in allowable emissions of any air contaminant and that does not result in the emission of any air contaminant not previously emitted, provided that the facility:

(i) has received a preconstruction permit or permit amendment or has been exempted pursuant to Section 382.057 from preconstruction permit requirements no earlier than 120 months before the change will occur; or

(ii) uses, regardless of whether the facility has received a permit, an air pollution control method that is at least as effective as the best available control technology, considering technical practicability and economic reasonableness, that the board required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the change will occur;

(F) a physical change in, or change in the method of operation of, a facility where the change is within the scope of a flexible permit or a multiple plant permit; or

(G) a change in the method of operation of a natural gas processing, treating, or compression facility connected to or part of a natural gas gathering or transmission pipeline which does not result in an annual emission rate of a pollutant in excess of the volume emitted at the maximum designed capacity, provided that the facility is one for which:

(i) construction or operation started on or before September 1, 1971, and at which either no modification has occurred after September 1, 1971, or at which modifications have occurred only pursuant to standard exemptions; or

(ii) construction started after September 1, 1971, and before March 1, 1972, and which registered in accordance with Section 382.060 as that section existed prior to September 1, 1991.

SECTION 2. Subsections (a) and (b), Section 382.051, Health and Safety Code, are amended to read as follows:

(a) The commission may issue a permit:

(1) to construct a new facility or modify an existing facility that may emit air contaminants; [~~or~~]

(2) to operate an existing facility under a voluntary emissions reduction permit; or

(3) to operate a federal source.

(b) To assist in fulfilling its authorization provided by Subsection (a), the commission may issue:

(1) special permits for certain facilities;

(2) a general permit [~~developed by rule~~] for numerous similar sources subject to Section 382.054;

(3) a standard permit [~~developed by rule~~] for [~~numerous~~] similar facilities [~~subject to Section 382.0518~~];

(4) a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere;

(5) a single federal operating permit or preconstruction permit for multiple federal sources or facilities located at the same site;

(6) a multiple plant permit for existing facilities at multiple locations subject to Section 382.0518 or 382.0519; or

(7) [~~(5)~~] other permits as necessary.

SECTION 3. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Section 382.05101 to read as follows:

Sec. 382.05101. DE MINIMIS AIR CONTAMINANTS. The commission may develop by rule the criteria to establish a de minimis level of air contaminants for facilities or groups of facilities below which a permit under Section 382.0518 or 382.0519, a standard permit under Section 382.05195, or a permit by rule under Section 382.05196 is not required.

SECTION 4. Subsections (a) and (c), Section 382.0511, Health and Safety Code, are amended to read as follows:

(a) The commission may consolidate into a single permit[~~:~~

[~~(1)~~] any permits, special permits, standard permits, permits by rule, or exemptions for a facility or federal source [~~issued by the commission before December 1, 1991; or~~

[~~(2) any permit issued by the commission on or after December 1, 1991, with any permits, special permits, or exemptions issued or qualified for by that date~~].

(c) The commission [~~by rule~~] may authorize changes in a federal source to proceed before the owner or operator obtains a federal operating permit or revisions to a federal operating permit if the changes are de minimis under Section 382.05101 or the owner or operator has obtained a preconstruction permit or permit amendment required by Section 382.0518 or is operating under a standard permit under Section 382.05195, a permit by rule under Section 382.05196, or an exemption allowed under Section 382.057.

SECTION 5. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Sections 382.0519 and 382.05191 through 382.05196 to read as follows:

Sec. 382.0519. VOLUNTARY EMISSIONS REDUCTION PERMIT. (a) Before September 1, 2001, the owner or operator of an existing, unpermitted facility not subject to the requirement to obtain a permit under Section 382.0518(g) may apply for a permit to operate that facility under this section.

(b) The commission shall grant within a reasonable time a permit under this section if, from the information available to the commission, including information presented at any public hearing or through written comment:

(1) the commission finds that the facility will use an air pollution control method at least as beneficial as that described in Section 382.003(9)(E)(ii), considering the age and remaining useful life of the facility, except as provided by Subdivision (2); or

(2) for a facility located in a near-nonattainment or nonattainment area for a national ambient air quality standard, the commission finds that the facility will use the more stringent of:

(A) a control method at least as beneficial as that described in Section 382.003(9)(E)(ii), considering the age and remaining useful life of the facility; or

(B) a control technology that the commission finds is demonstrated to be generally achievable for facilities in that area of the same type that are permitted under this section, considering the age and remaining useful life of the facility.

(c) If the commission finds that the emissions from the facility will contravene the standards under Subsection (b) or the intent of this chapter, including protection of the public's health and physical property, the commission may not grant the permit under this section.

(d) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before work is begun on the construction of the modification.

(e) A permit issued by the commission under this section may defer the implementation of the requirement of reductions in the emissions of certain air contaminants only if the applicant will make substantial emissions reductions in other specific air contaminants. The deferral shall be based on a prioritization of air

contaminants by the commission as necessary to meet local, regional, and statewide air quality needs.

(f) The commission shall give priority to the processing of applications for the issuance, amendment, or renewal of a permit for those facilities authorized under Section 382.0518(g) that are located less than two miles from the outer perimeter of a school, child day-care facility, hospital, or nursing home.

Sec. 382.05191. VOLUNTARY EMISSIONS REDUCTION PERMIT: NOTICE AND HEARING. (a) An applicant for a permit under Section 382.0519 shall publish notice of intent to obtain the permit in accordance with Section 382.056.

(b) The commission may authorize an applicant for a permit for a facility that constitutes or is part of a small business stationary source as defined in Section 382.0365(g)(2) to provide notice using an alternative means if the commission finds that the proposed method will result in equal or better communication with the public, considering the effectiveness of the notice in reaching potentially affected persons, cost, and consistency with federal requirements.

(c) The 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 Section 382.0519 in the same manner as provided by Sections 382.0561 and 382.0562.

(d) A person affected by a decision of the commission to issue or deny a voluntary emissions reduction permit may move for rehearing and is entitled to judicial review under Section 382.032.

Sec. 382.05192. REVIEW AND RENEWAL OF VOLUNTARY EMISSIONS REDUCTION AND MULTIPLE PLANT PERMITS. Review and renewal of a permit issued under Section 382.0519 or 382.05194 shall be conducted in accordance with Section 382.055.

Sec. 382.05193. EMISSIONS PERMITS THROUGH EMISSIONS REDUCTION. (a) The commission may issue a permit under Section 382.0519 for a facility:

(1) that makes a good faith effort to make equipment improvements and emissions reductions necessary to meet the requirements of that section;

(2) that, in spite of the effort, cannot reduce the facility's emissions to the degree necessary for the issuance of the permit; and

(3) the owner or operator of which acquires a sufficient number of emissions reduction credits to offset the facility's excessive emissions under the program established under Subsection (b).

(b) The commission by rule shall establish a program to grant emissions reduction credits to a facility if the owner or operator conducts an emissions reduction project to offset the facility's excessive emissions. To be eligible for a credit to offset a facility's emissions, the emissions reduction project must reduce emissions in the airshed, as defined by commission rule, in which the facility is located.

(c) The commission by rule shall provide that an emissions reduction project must reduce net emissions from one or more sources in this state in an amount and type sufficient to prevent air pollution to a degree comparable to the amount of the reduction in the facility's emissions that would be necessary to meet the permit requirement. Qualifying emissions reduction projects must include:

(1) generation of electric energy by a low-emission method, including:

(A) wind power;

(B) biomass gasification power; and

(C) solar power;

(2) the purchase and destruction of high-emission automobiles or other mobile sources;

(3) the reduction of emissions from a permitted facility that emits air contaminants to a level significantly below the levels necessary to comply with the facility's permit;

(4) a carpooling or alternative transportation program for the owner's or operator's employees;

(5) a telecommuting program for the owner's or operator's employees; and

(6) conversion of a motor vehicle fleet operated by the owner or operator to a low-sulphur fuel or an alternative fuel approved by the commission.

(d) A permit issued under Section 382.0519 for a facility participating in the program established under this section must be conditioned on the successful and timely completion of the project or projects for which the facility owner or operator acquires the credits.

(e) To renew the permit of a facility permitted under Section 382.0519 with credits acquired under the program established under this section, the commission shall require the owner or operator of the facility to have:

(1) made equipment improvements and emissions reductions necessary to meet the permit requirements under that section for a new permit; or

(2) acquired additional credits under the program as necessary to meet the permit requirements under that section for a new permit.

(f) Emissions reduction credits acquired under the program established under this section are not transferrable.

Sec. 382.05194. MULTIPLE PLANT PERMIT. (a) The commission may issue a multiple plant permit for multiple plant sites that are owned or operated by the same person or persons under common control if the commission finds that:

(1) the aggregate rate of emission of air contaminants to be authorized under the permit does not exceed the total of:

(A) for previously permitted facilities, the rates authorized in the existing permits; and

(B) for existing unpermitted facilities not subject to the requirement to obtain a preconstruction authorization under Section 382.0518(g) or for facilities authorized under Section 382.0519, the rates that would be authorized under Section 382.0519; and

(2) there is no indication that the emissions from the facilities will contravene the intent of this chapter, including protection of the public's health and physical property.

(b) A permit issued under this section may not authorize emissions from any of the facilities authorized under the permit that exceed the facility's highest historic annual rate or the levels authorized in the facility's most recent permit. In the absence of records extending back to the original construction of the facility, best engineering judgment shall be used to demonstrate the facility's highest historic annual rate to the commission.

(c) Emissions control equipment previously installed at a facility permitted under this section may not be removed or disabled unless the action is undertaken to maintain or upgrade the control equipment or to otherwise reduce the impact of emissions authorized by the commission.

(d) The commission shall publish notice of a proposed multiple plant permit for existing facilities in the Texas Register and in one or more statewide or regional newspapers designated by the commission by rule that will, in the commission's judgment, provide reasonable notice throughout the state. If the multiple plant permit for existing facilities will be effective for only part of the state, the notice shall be published in a newspaper of general circulation in the area to be affected. The commission by rule may require additional notice to be given. The notice must include an invitation for written comments by the public to the commission regarding the proposed multiple plant permit and must be published not later than the 30th day before the date the commission issues the multiple plant permit.

(e) For existing facilities, the commission shall hold a public meeting to provide an additional opportunity for public comment. The commission shall give notice of a public meeting under this subsection as part of the notice described in Subsection (d) not later than the 30th day before the date of the meeting.

(f) If the commission receives public comment related to the issuance of a multiple plant permit for existing facilities, the commission shall issue a written response to the comments at the same time the commission issues or denies the permit. The response must be made available to the public, and the commission shall mail the response to each person who made a comment.

(g) The commission by rule shall establish the procedures for application and approval for the use of a multiple plant permit.

(h) For a multiple plant permit that applies only to existing facilities for which an application is filed before September 1, 2001, the issuance, amendment, or revocation by the commission of the permit is not subject to Chapter 2001, Government Code.

(i) The commission may adopt rules as necessary to implement and administer this section and may delegate to the executive director under Section 382.061 the authority to issue, amend, or revoke a multiple plant permit.

Sec. 382.05195. STANDARD PERMIT. (a) The commission may issue a standard permit for new or existing similar facilities if the commission finds that:

(1) the standard permit is enforceable;

(2) the commission can adequately monitor compliance with the terms of the standard permit; and

(3) for permit applications for facilities subject to Sections 382.0518(a)-(d) filed before September 1, 2001, the facilities will use control technology at least as effective as that described in Section 382.0518(b). For permit applications filed after August 31, 2001, all facilities permitted under this section will use control technology at least as effective as that described in Section 382.0518(b).

(b) The commission shall publish notice of a proposed standard permit in the Texas Register and in one or more statewide or regional newspapers designated by the commission by rule that will, in the commission's judgment, provide reasonable notice throughout the state. If the standard permit will be effective for only part of the state, the notice shall be published in a newspaper of general circulation in the area to be

affected. The commission by rule may require additional notice to be given. The notice must include an invitation for written comments by the public to the commission regarding the proposed standard permit and must be published not later than the 30th day before the date the commission issues the standard permit.

(c) The commission shall hold a public meeting to provide an additional opportunity for public comment. The commission shall give notice of a public meeting under this subsection as part of the notice described in Subsection (b) not later than the 30th day before the date of the meeting.

(d) If the commission receives public comment related to the issuance of a standard permit, the commission shall issue a written response to the comments at the same time the commission issues or denies the permit. The response must be made available to the public, and the commission shall mail the response to each person who made a comment.

(e) The commission by rule shall establish procedures for the amendment of a standard permit and for an application for, the issuance of, the renewal of, and the revocation of an authorization to use a standard permit.

(f) A facility authorized to emit air contaminants under a standard permit shall comply with an amendment to the standard permit beginning on the date the facility's authorization to use the standard permit is renewed or the date the commission otherwise provides. Before the date the facility is required to comply with the amendment, the standard permit, as it read before the amendment, applies to the facility.

(g) The adoption or amendment of a standard permit or the issuance, renewal, or revocation of an authorization to use a standard permit is not subject to Chapter 2001, Government Code.

(h) The commission may adopt rules as necessary to implement and administer this section.

(i) The commission may delegate to the executive director the authority to issue, amend, renew, or revoke an authorization to use a standard permit.

Sec. 382.05196. PERMITS BY RULE. (a) Consistent with Section 382.051, the commission may adopt permits by rule for certain types of facilities if it is found on investigation that the types of facilities will not make a significant contribution of air contaminants to the atmosphere. The commission may not adopt a permit by rule authorizing any facility defined as "major" under any applicable preconstruction permitting requirements of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) or regulations adopted under that Act. Nothing in this subsection shall be construed to limit the commission's general power to control the state's air quality under Section 382.011(a).

(b) The commission by rule shall specifically define the terms and conditions for a permit by rule under this section.

SECTION 6. Subsection (a), Section 382.057, Health and Safety Code, is amended to read as follows:

(a) Consistent with Section 382.0511, the commission by rule may exempt from the requirements of Section 382.0518 changes within any facility [~~and certain types of facilities~~] if it is found on investigation that such changes [~~or types of facilities~~] will not make a significant contribution of air contaminants to the atmosphere. The commission by rule shall exempt from the requirements of Section 382.0518 or issue

a standard permit for the installation of emission control equipment that constitutes a modification or a new facility, subject to such conditions restricting the applicability of such exemption or standard permit that the commission deems necessary to accomplish the intent of this chapter. The commission may not exempt [~~any facility or~~] any modification of an existing facility defined as "major" under any applicable preconstruction permitting requirements of the federal Clean Air Act or regulations adopted under that Act. Nothing in this subsection shall be construed to limit the commission's general power to control the state's air quality under Section 382.011(a).

SECTION 7. Section 382.058, Health and Safety Code, is amended to read as follows:

Sec. 382.058. PERMITS BY RULE OR STANDARD PERMITS [~~LIMITATION ON COMMISSION EXEMPTION~~] FOR CONSTRUCTION OF CERTAIN CONCRETE PLANTS. (a) A person may not begin construction on any concrete plant that performs wet batching, dry batching, or central mixing under a standard permit under Section 382.05195 or a permit by rule [~~an exemption~~] adopted by the commission under Section 382.05196 [~~382.057~~] unless the person has complied with the notice and opportunity for hearing provisions under Section 382.056.

(b) This section does not apply to a concrete plant located temporarily in the right-of-way, or contiguous to the right-of-way, of a public works project.

(c) For purposes of this section, only those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing under Section 382.056(d) as a person who may be affected.

SECTION 8. Subsection (b), Section 382.062, Health and Safety Code, is amended to read as follows:

(b) The commission may adopt rules relating to charging and collecting a fee for an exemption, for [~~from~~] a permit, for a permit by rule, for a voluntary emissions reduction permit, for a multiple plant permit, or for a standard permit [~~authorized by commission rule~~] and for a variance.

SECTION 9. Subsection (d), Section 382.0621, Health and Safety Code, is amended to read as follows:

(d) Except as provided by this section, the [~~The~~] commission may not impose a fee for any amount of emissions of an air contaminant regulated under the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549) in excess of 4,000 tons per year from any source. On and after September 1, 2001, for a facility that is not subject to the requirement to obtain a permit under Section 382.0518(g) that does not have a permit application pending, the commission shall:

(1) impose a fee under this section for all emissions, including emissions in excess of 4,000 tons; and

(2) treble the amount of the fee imposed for emissions in excess of 4,000 tons each fiscal year.

SECTION 10. The Texas Natural Resource Conservation Commission shall adopt, as soon as practicable after the effective date of this Act, any rules necessary to implement the changes in law made by this Act.

SECTION 11. Not later than January 15, 2001, the Texas Natural Resource Conservation Commission shall prepare and distribute to the governor, the lieutenant governor, the speaker of the house of representatives, the chair of the Senate Committee on Natural Resources, and the chair of the House Committee on

Environmental Regulation a report on the number of companies that have obtained or applied for a permit under Section 382.0519, Health and Safety Code, as added by this Act, and the reductions in emissions anticipated to result from issuance of such permits.

SECTION 12. (a) The Texas Natural Resource Conservation Commission may not initiate an enforcement action against a person for the failure to obtain a preconstruction permit under Section 382.0518, Health and Safety Code, or a rule adopted or order issued by the commission under that section, that is related to the modification of a facility that may emit air contaminants if, on or before August 31, 2001, the person files an application for a permit for the facility under Section 382.0519, Health and Safety Code, as added by this Act.

(b) This section does not apply to an act related to the modification of a facility that occurs after March 1, 1999.

SECTION 13. If S.B. No. 7, Acts of the 76th Legislature, Regular Session, 1999, is enacted and becomes law, to the extent that any provision of law amended by this Act conflicts with a provision of S.B. No. 7 that specifically relates to air contaminant emissions, the provision of S.B. No. 7 prevails, irrespective of the relative dates of enactment.

SECTION 14. 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 Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1059**

Senator Barrientos submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 1059** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

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|---|---|
| BARRIENTOS | KEEL |
| MADLA | SIEBERT |
| WHITMIRE | B. TURNER |
| | GUTIERREZ |
| 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 4

Senator Bivins submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 4** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

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|---|---|
| BIVINS | SADLER |
| HARRIS | DUNNAM |
| NELSON | DUTTON |
| OGDEN | GRUSENDORF |
| WEST | HOCHBERG |
| On the part of the Senate | On the part of the House |

A BILL TO BE ENTITLED
AN ACT

relating to public school finance, property tax relief, and public education; making an appropriation.

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

ARTICLE 1. SCHOOL FINANCE AND PROPERTY TAX RELIEF

SECTION 1.01. Subdivision (3), Section 41.001, Education Code, is amended to read as follows:

(3) "Weighted average daily attendance" has the meaning assigned by Section 42.302[~~, except that:~~

[~~(A) weighted average daily attendance is computed using the estimate of average daily attendance under Section 42.254; and~~

[~~(B) the estimate under Section 42.254 is modified by including a student residing in a school district but attending school in another district in the estimate for the district of the student's residence and not of the district in which the student attends school~~].

SECTION 1.02. Section 41.002, Education Code, is amended by amending Subsections (a), (b), (e), and (f) and adding Subsection (g) to read as follows:

(a) A school district may not have a wealth per student that exceeds $295,000 [~~$280,000~~].

(b) For [~~Except as provided by Subsection (c), for~~] purposes of this chapter, the commissioner shall adjust, in accordance with Section 42.2521 [~~by the amount of the decline~~], the taxable values of a school district that, due to factors beyond the control of the board of trustees, experiences a rapid decline [~~from the preceding year~~] in the tax

base used in calculating taxable values [~~that is beyond the control of the board of trustees of the district~~].

(e) Notwithstanding Subsection (a), and except as provided by Subsection (g) [~~for the 1997-1998, 1998-1999, and 1999-2000 school years~~], in accordance with a determination of the commissioner, the wealth per student that a school district may have after exercising an option under Section 41.003(2) or (3) may not be less than the amount needed to maintain state and local revenue in an amount equal to state and local revenue per weighted student for maintenance and operation of the district for the 1992-1993 school year less the district's current year distribution per weighted student from the available school fund, other than amounts distributed under Chapter 31, if the district imposes an effective tax rate for maintenance and operation of the district equal to the greater of the district's current tax rate or $1.50 on the $100 valuation of taxable property. [~~This subsection expires September 1, 2000.~~]

(f) For purposes of Subsection (e), a school district's effective tax rate is determined by dividing the total amount of taxes collected by the district for the applicable school year less any amounts paid into a tax increment fund under Chapter 311, Tax Code, by the quotient of the district's taxable value of property, as determined under Subchapter M, Chapter 403, Government Code, divided by 100. [~~This subsection expires September 1, 2000.~~]

(g) The wealth per student that a district may have under Subsection (e) is adjusted as follows:

AWPS = WPS X (((EWL/280,000 - 1) X DTR/1.5) + 1)

where:

"AWPS" is the district's wealth per student;

"WPS" is the district's wealth per student determined under Subsection (e);

"EWL" is the equalized wealth level; and

"DTR" is the district's adopted maintenance and operations tax rate for the current school year.

SECTION 1.03. Section 41.003, Education Code, is amended to read as follows:

Sec. 41.003. OPTIONS TO ACHIEVE EQUALIZED WEALTH LEVEL. A district with a wealth per student that exceeds the equalized wealth level may take any combination of the following actions to achieve the equalized wealth level:

(1) consolidation with another district as provided by Subchapter B;

(2) detachment of territory as provided by Subchapter C;

(3) purchase of average daily attendance credit as provided by Subchapter D;

(4) [~~contracting for the~~] education of nonresident students as provided by Subchapter E; or

(5) tax base consolidation with another district as provided by Subchapter F.

SECTION 1.04. Subchapter A, Chapter 41, Education Code, is amended by adding Section 41.0031 to read as follows:

Sec. 41.0031. INCLUSION OF ATTENDANCE CREDITS AND NONRESIDENTS IN WEIGHTED AVERAGE DAILY ATTENDANCE. In determining whether a school district has a wealth per student less than or equal to the equalized wealth level, the commissioner shall use:

(1) the district's final weighted average daily attendance; and

(2) the number of attendance credits a district purchases under Subchapter D or the number of nonresident students a district educates under Subchapter E for a school year.

SECTION 1.05. Subsection (a), Section 41.004, Education Code, is amended to read as follows:

(a) Not later than July 15 of each year, using the estimate of enrollment under Section 42.254, the commissioner shall review the wealth per student of school districts in the state and shall notify:

(1) each district with wealth per student exceeding the equalized wealth level;

(2) each district to which the commissioner proposes to annex property detached from a district notified under Subdivision (1), if necessary, under Subchapter G; and

(3) each district to which the commissioner proposes to consolidate a district notified under Subdivision (1), if necessary, under Subchapter H.

SECTION 1.06. Section 41.093, Education Code, is amended by adding Subsection (c) to read as follows:

(c) The cost of an attendance credit for a school district is computed using the final tax collections of the district.

SECTION 1.07. Subchapter E, Chapter 41, Education Code, is amended by adding Section 41.124 to read as follows:

Sec. 41.124. TRANSFERS. (a) The board of trustees of a school district with a wealth per student that exceeds the equalized wealth level may reduce the district's wealth per student by serving nonresident students who transfer to the district and are educated by the district but who are not charged tuition. A district that exercises the option under this subsection is not required to execute an agreement with the school district in which a transferring student resides and must certify to the commissioner that the district has not charged or received tuition for the transferring students.

(b) A school district with a wealth per student that exceeds the equalized wealth level that pays tuition to another school district for the education of students that reside in the district may apply the amount of tuition paid toward the cost of the option chosen by the district to reduce its wealth per student. The amount applied under this subsection may not exceed the amount determined under Section 41.093 as the cost of an attendance credit for the district. The commissioner may require any reports necessary to document the tuition payments.

(c) A school district that receives tuition for a student from a school district with a wealth per student that exceeds the equalized wealth level may not claim attendance for that student for purposes of Chapters 42 and 46 and the technology allotment under Section 31.021(b)(2).

SECTION 1.08. The heading to Subchapter E, Chapter 41, Education Code, is amended to read as follows:

SUBCHAPTER E. [~~CONTRACT FOR~~]
EDUCATION OF NONRESIDENT STUDENTS

SECTION 1.09. Subsection (b), Section 42.002, Education Code, is amended to read as follows:

(b) The Foundation School Program consists of:

(1) two tiers that in combination provide for:

(A) sufficient financing for all school districts to provide a basic program of education that is rated academically acceptable or higher under Section 39.072 and meets other applicable legal standards; and

(B) substantially equal access to funds to provide an enriched program [~~and additional funds for facilities~~]; and

(2) a facilities component as provided by Chapter 46.

SECTION 1.10. Subsection (d), Section 42.007, Education Code, is amended to read as follows:

(d) The board shall conduct a study on the funding elements each biennium, as appropriate. The study must include a determination of the projected cost to the state in the next state fiscal biennium of ensuring the ability of each school district to maintain existing programs without increasing property tax rates.

SECTION 1.11. Section 42.101, Education Code, is amended to read as follows:

Sec. 42.101. BASIC ALLOTMENT. For each student in average daily attendance, not including the time students spend each day in special education programs in an instructional arrangement other than mainstream or career and technology education programs, for which an additional allotment is made under Subchapter C, a district is entitled to an allotment of $2,537 [~~$2,387~~]. A greater amount for any school year may be provided by appropriation.

SECTION 1.12. Subchapter B, Chapter 42, Education Code, is amended by adding Section 42.106 to read as follows:

Sec. 42.106. ADJUSTED PROPERTY VALUE FOR DISTRICTS NOT OFFERING ALL GRADE LEVELS. For purposes of this chapter, the taxable value of property of a school district that contracts for students residing in the district to be educated in another district under Section 25.039(a) is adjusted by applying the formula:

ADPV = DPV - (TN/.015)

where:

"ADPV" is the district's adjusted taxable value of property;

"DPV" is the taxable value of property in the district for the preceding tax year determined under Subchapter M, Chapter 403, Government Code; and

"TN" is the total amount of tuition required to be paid by the district under Section 25.039 for the school year for which the adjustment is made.

SECTION 1.13. Section 42.152, Education Code, is amended by adding Subsections (s) and (t) to read as follows:

(s) A reduction made under this section or the General Appropriations Act in the allotment under this section does not affect the computation of students in weighted average daily attendance for purposes of Subchapter F.

(t) For each year of a state fiscal biennium, the commissioner shall reduce the guaranteed level of state and local funds per weighted student per cent of tax effort under Section 42.302 by an amount sufficient to reduce state costs in an amount equal to the increase in state costs due to the application of Subsection (s). The commissioner shall determine the same reduction for each year and shall announce the determination as soon as practicable after August 1 preceding the beginning of the biennium. A determination by the commissioner under this section is final and may not be appealed.

SECTION 1.14. Subchapter C, Chapter 42, Education Code, is amended by adding Section 42.158 to read as follows:

Sec. 42.158. NEW INSTRUCTIONAL FACILITY ALLOTMENT. (a) A school district is entitled to an additional allotment as provided by this section for operational expenses associated with opening a new instructional facility.

(b) For the first school year in which students attend a new instructional facility, a school district is entitled to an allotment of $250 for each student in average daily attendance at the facility. For the second school year in which students attend that instructional facility, a school district is entitled to an allotment of $250 for each additional student in average daily attendance at the facility.

(c) For purposes of this section, the number of additional students in average daily attendance at a facility is the difference between the number of students in average daily attendance in the current year at that facility and the number of students in average daily attendance at that facility in the preceding year.

(d) The amount appropriated for allotments under this section may not exceed $25 million in a school year. If the total amount of allotments to which districts are entitled under this section for a school year exceeds the amount appropriated for allotments under this section, the commissioner shall reduce each district's allotment under this section in the manner provided by Section 42.253(h).

(e) A school district that is required to take action under Chapter 41 to reduce its wealth per student to the equalized wealth level is entitled to a credit, in the amount of the allotments to which the district is entitled under this section, against the total amount required under Section 41.093 for the district to purchase attendance credits. A school district that is otherwise ineligible for state aid under this chapter is entitled to receive allotments under this section.

(f) The commissioner may adopt rules necessary to implement this section.

(g) In this section, "instructional facility" has the meaning assigned by Section 46.001.

SECTION 1.15. Subsection (a), Section 42.251, Education Code, is amended to read as follows:

(a) The sum of the basic allotment under Subchapter B and the special allotments under Subchapter C, computed in accordance with this chapter, constitute the tier one allotments. The sum of the tier one allotments and[;] the guaranteed yield allotments under Subchapter F, [~~and assistance provided under the school facilities assistance program under Subchapter H,~~] computed in accordance with this chapter, constitute the total cost of the Foundation School Program.

SECTION 1.16. Section 42.2511, Education Code, is amended to read as follows:

Sec. 42.2511. [~~COMPUTATION OF STATE AID FOR 1997-1998 SCHOOL YEAR;~~] ADDITIONAL STATE AID FOR HOMESTEAD EXEMPTION. (a) Notwithstanding any other provision of this chapter, [~~in computing state aid for the 1997-1998 school year, a school district's taxable value of property under Subchapter M, Chapter 403, Government Code, is determined as if the increase in the homestead exemption under Section 1-b(c), Article VIII, Texas Constitution, and the additional limitation on tax increases under Section 1-b(d) of that article, as proposed by H.J.R. No. 4, 75th Legislature, Regular Session, 1997, had been in effect for the 1996 tax year.~~

[~~(b) For the 1997-1998 and 1998-1999 school years,~~] a school district is entitled to additional state aid to the extent that state aid under this chapter based on the determination of the school district's taxable value of property as provided under Subchapter M, Chapter 403, Government Code, [~~by Subsection (a)~~] does not fully compensate the district for ad valorem tax revenue [~~that would have been~~] lost due to the increase in the homestead exemption under Section 1-b(c), Article VIII, Texas Constitution, as proposed by H.J.R. No. 4, 75th Legislature, Regular Session, 1997, and the additional limitation on tax increases under Section 1-b(d), Article VIII, Texas Constitution, as proposed by H.J.R. No. 4, 75th Legislature, Regular Session, 1997 [~~if the increased exemption and additional limitation had been in effect for the 1996 tax year~~].

(b) The commissioner, using information provided by the comptroller, shall compute the amount of additional state aid to which a district is entitled under this section [~~subsection~~]. A determination by the commissioner under this section [~~subsection~~] is final and may not be appealed.

[~~(c) This section expires September 1, 1999.~~]

SECTION 1.17. Subchapter E, Chapter 42, Education Code, is amended by adding Sections 42.2512 and 42.2513 to read as follows:

Sec. 42.2512. ADDITIONAL STATE AID FOR PROFESSIONAL STAFF SALARIES. (a) A school district, including a school district that is otherwise ineligible for state aid under this chapter, is entitled to state aid in an amount, as determined by the commissioner, equal to the difference, if any, between:

(1) an amount equal to the product of $3,000 multiplied by the number of classroom teachers, full-time librarians, full-time counselors certified under Subchapter B, Chapter 21, and full-time school nurses employed by the district and entitled to a minimum salary under Section 21.402; and

(2) an amount equal to 80 percent of the amount of additional funds to which the district is entitled due to the increases made by S.B. No. 4, Acts of the 76th Legislature, Regular Session, 1999, to:

(A) the equalized wealth level under Section 41.002;

(B) the basic allotment under Section 42.101; and

(C) the guaranteed level of state and local funds per weighted student per cent of tax effort under Section 42.302.

(b) A determination by the commissioner under this section is final and may not be appealed.

(c) The commissioner may adopt rules to implement this section.

Sec. 42.2513. SALARY TRANSITION AID. (a) For the 1999-2000 and 2000-2001 school years, the commissioner shall increase the entitlement under this chapter of a school district that experiences additional salary cost resulting from Chapter 592 (H.B. No. 4), Acts of the 75th Legislature, Regular Session, 1997, that is not fully funded by an amount equal to 20 percent of the amount of additional funds to which the district is entitled due to the increases made by S.B. No. 4, Acts of the 76th Legislature, Regular Session, 1999, to:

(1) the equalized wealth level under Section 41.002;

(2) the basic allotment under Section 42.101; and

(3) the guaranteed level of state and local funds per weighted student per cent of tax effort under Section 42.302.

(b) The amount of additional salary cost shall be computed by determining what the district's salary cost for the 1996-1997 school year would have been if, for purposes of the minimum salary schedule under Section 21.402, as that section existed on September 1, 1996, the amount appropriated for purposes of the Foundation School Program for the 1997-1998 state fiscal year were increased by $520 million and comparing that cost to the amount the district was actually required to pay under Section 21.402. For this purpose, the commissioner shall use 1996-1997 employment and salary data as reported through the Public Education Information Management System (PEIMS).

(c) The commissioner shall determine the amount of additional state aid under this section to which each school district is entitled. A decision of the commissioner under this section is final and may not be appealed.

(d) This section expires September 1, 2001.

SECTION 1.18. Subchapter E, Chapter 42, Education Code, is amended by adding Sections 42.2521 and 42.2522 to read as follows:

Sec. 42.2521. ADJUSTMENT FOR RAPID DECLINE IN TAXABLE VALUE OF PROPERTY. (a) For purposes of Chapters 41 and 46 and this chapter, and to the extent money specifically authorized to be used under this section is available, the commissioner shall adjust the taxable value of property in a school district that, due to factors beyond the control of the board of trustees, experiences a rapid decline in the tax base used in calculating taxable values in excess of four percent of the tax base used in the preceding year.

(b) To the extent that a sufficient amount of money is not available to fund all adjustments under this section, the commissioner shall reduce adjustments in the manner provided by Section 42.253(h) so that the total amount of adjustments equals the amount of money available to fund the adjustments.

(c) A decision of the commissioner under this section is final and may not be appealed.

Sec. 42.2522. ADJUSTMENT FOR OPTIONAL HOMESTEAD EXEMPTION. (a) In any school year, the commissioner may not provide funding under this chapter based on a school district's taxable value of property computed in accordance with Section 403.302(d)(2), Government Code, unless:

(1) funds are specifically appropriated for purposes of this section; or

(2) the commissioner determines that the total amount of state funds appropriated for purposes of the Foundation School Program for the school year exceeds the amount of state funds distributed to school districts in accordance with Section 42.253 based on the taxable values of property in school districts computed in accordance with Section 403.302(d), Government Code, without any deduction for residence homestead exemptions granted under Section 11.13(n), Tax Code.

(b) In making a determination under Subsection (a)(2), the commissioner shall:

(1) notwithstanding Section 42.253(b), reduce the entitlement under this chapter of a school district whose final taxable value of property is higher than the estimate under Section 42.254 and make payments to school districts accordingly; and

(2) give priority to school districts that, due to factors beyond the control of the board of trustees, experience a rapid decline in the tax base used in calculating taxable values in excess of four percent of the tax base used in the preceding year.

(c) In the first year of a state fiscal biennium, before providing funding as provided by Subsection (a)(2), the commissioner shall ensure that sufficient appropriated funds for purposes of the Foundation School Program are available for the second year of the biennium, including funds to be used for purposes of Section 42.2521.

(d) If the commissioner determines that the amount of funds available under Subsection (a)(1) or (2) does not at least equal the total amount of state funding to which districts would be entitled if state funding under this chapter were based on the taxable values of property in school districts computed in accordance with Section 403.302(d)(2), Government Code, the commissioner may, to the extent necessary, provide state funding based on a uniform lesser fraction of the deduction under Section 403.302(d)(2), Government Code.

(e) The commissioner shall notify school districts as soon as practicable as to the availability of funds under this section. For purposes of computing a rollback tax rate under Section 26.08, Tax Code, a district shall adjust the district's tax rate limit in the manner provided by comptroller rule to reflect assistance received under this section.

SECTION 1.19. Section 42.253, Education Code, is amended by adding Subsections (e-1) and (e-2) to read as follows:

(e-1) For the 1999-2000 and 2000-2001 school years, the commissioner shall recompute the limit authorized under Subsection (e) for each school district to be a rate that would entitle the district to an amount of state and local funds per weighted student in the current year, using a guaranteed level of state and local funds per cent of tax effort under Section 42.302 of $23.10, equal to the amount of state and local funds to which the district would have been entitled under this chapter for the current school year if there had been no change in law. For purposes of this subsection, the commissioner shall base the determination of a district's entitlement under prior law on the district's maximum tax rate for the 1999-2000 school year under Subsection (e) and the funding elements for this chapter as it existed on May 31, 1999.

(e-2) The commissioner may adopt rules necessary to administer Subsection (e-1). A determination of the commissioner under Subsection (e-1) is final and may not be appealed. Subsection (e-1) and this subsection expire September 1, 2001.

SECTION 1.20. Sections 42.301, 42.302, and 42.303, Education Code, are amended to read as follows:

Sec. 42.301. PURPOSE. The purpose of the guaranteed yield component of the Foundation School Program is to provide each school district with the opportunity to provide the basic program and to supplement that program at a level of its own choice [~~and with access to additional funds for facilities~~]. An allotment under this subchapter may be used for any legal purpose other than[~~, including~~] capital outlay or [~~and~~] debt service.

Sec. 42.302. ALLOTMENT. (a) Each school district is guaranteed a specified amount per weighted student in state and local funds for each cent of tax effort over that required for the district's local fund assignment up to the maximum level specified in this subchapter. The amount of state support, subject only to the maximum amount under Section 42.303, is determined by the formula:

GYA = (GL X WADA X DTR X 100) - LR

where:

"GYA" is the guaranteed yield amount of state funds to be allocated to the district;

"GL" is the dollar amount guaranteed level of state and local funds per weighted student per cent of tax effort, which is $24.99 [~~$21~~] or a greater amount for any year provided by appropriation;

"WADA" is the number of students in weighted average daily attendance, which is calculated by dividing the sum of the school district's allotments under Subchapters B and C, less any allotment to the district for transportation, any allotment under Section 42.158, and 50 percent of the adjustment under Section 42.102, by the basic allotment for the applicable year;

"DTR" is the district enrichment [~~and facilities~~] tax rate of the school district, which is determined by subtracting the amounts specified by Subsection (b) from the total amount of maintenance and operations taxes collected by the school district for the applicable school year and dividing the difference by the quotient of the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, or, if applicable, under Section 42.2521, divided by 100; and

"LR" is the local revenue, which is determined by multiplying "DTR" by the quotient of the district's taxable value of property as determined under Subchapter M,

Chapter 403, Government Code, or, if applicable, under Section 42.2521, divided by 100.

(b) In computing the district enrichment [~~and facilities~~] tax rate of a school district, the total amount of maintenance and operations taxes collected by the school district does not include the amount of:

(1) the district's local fund assignment under Section 42.252; or

(2) [~~taxes collected to pay the local share of the cost of an instructional facility for which the district receives state assistance under Chapter 46; or~~

[~~(3)~~] taxes paid into a tax increment fund under Chapter 311, Tax Code.

Sec. 42.303. LIMITATION ON ENRICHMENT [~~AND FACILITIES~~] TAX RATE. The district enrichment [~~and facilities~~] tax rate ("DTR") under Section 42.302 may not exceed $0.64 per $100 of valuation, or a greater amount for any year provided by appropriation.

SECTION 1.21. The heading to Chapter 46, Education Code, is amended to read as follows:

CHAPTER 46. ASSISTANCE WITH INSTRUCTIONAL FACILITIES AND PAYMENT OF EXISTING DEBT [~~ALLOTMENT~~]

SECTION 1.22. Sections 46.001 through 46.011, Education Code, are designated as Subchapter A, Chapter 46, Education Code, and a new subchapter heading is added to read as follows:

SUBCHAPTER A. INSTRUCTIONAL FACILITIES ALLOTMENT

SECTION 1.23. Sections 46.001 and 46.002, Education Code, are amended to read as follows:

Sec. 46.001. DEFINITION. In this subchapter [~~chapter~~], "instructional facility" means real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required under Section 28.002.

Sec. 46.002. RULES. (a) The commissioner may adopt rules for the administration of this subchapter [~~chapter~~].

(b) The commissioner's rules may limit the amount of an allotment under this subchapter [~~chapter~~] that is to be used to construct, acquire, renovate, or improve an instructional facility that may also be used for noninstructional or extracurricular activities.

SECTION 1.24. Subsections (a) and (g), Section 46.003, Education Code, are amended to read as follows:

(a) For each year, except as provided by Sections 46.005 and 46.006, a school district is guaranteed a specified amount per student in state and local funds for each cent of tax effort, up to the maximum rate under Subsection (b), to pay the principal of and interest on eligible bonds issued to construct, acquire, renovate, or improve an instructional facility. The amount of state support is determined by the formula:

FYA = (FYL X ADA X BTR X 100) - (BTR X (DPV/100))

where:

"FYA" is the guaranteed facilities yield amount of state funds allocated to the district for the year;

"FYL" is the dollar amount guaranteed level of state and local funds per student per cent of tax effort, which is $35 [~~$28~~] or a greater amount for any year provided by appropriation;

"ADA" is the greater of the number of students in average daily attendance, as determined under Section 42.005, in the district or 400;

"BTR" is the district's bond tax rate for the current year, which is determined by dividing the amount of taxes budgeted to be collected by the district for payment of eligible bonds by the quotient of the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, or, if applicable, Section 42.2521, divided by 100; and

"DPV" is the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, or, if applicable, Section 42.2521.

(g) To receive state assistance under this subchapter [~~chapter~~], a school district must apply to the commissioner in accordance with rules adopted by the commissioner before issuing bonds that will be paid with state assistance. Until the bonds are fully paid or the instructional facility is sold:

(1) a school district is entitled to continue receiving state assistance without reapplying to the commissioner; and

(2) the guaranteed level of state and local funds per student per cent of tax effort applicable to the bonds may not be reduced below the level provided for the year in which the bonds were issued.

SECTION 1.25. Section 46.004, Education Code, is amended to read as follows:

Sec. 46.004. LEASE-PURCHASE AGREEMENTS. (a) A district may receive state assistance in connection with a lease-purchase agreement concerning an instructional facility. For purposes of this subchapter [~~chapter~~]:

(1) taxes levied for purposes of maintenance and operations that are necessary to pay a district's share of the payments under a lease-purchase agreement for which the district receives state assistance under this subchapter [~~chapter~~] are considered to be bond taxes; and

(2) payments under a lease-purchase agreement are considered to be payments of principal of and interest on bonds.

(b) Section 46.003(b) applies to taxes levied to pay a district's share of the payments under a lease-purchase agreement for which the district receives state assistance under this subchapter [~~chapter~~].

(c) A lease-purchase agreement must be for a term of at least eight years to be eligible to be paid with state and local funds under this subchapter [~~chapter~~].

SECTION 1.26. Section 46.006, Education Code, is amended to read as follows:

Sec. 46.006. SHORTAGE OR EXCESS OF FUNDS APPROPRIATED FOR NEW PROJECTS. (a) If the total amount appropriated for a year for new projects is less than the amount of money to which school districts applying for state assistance are entitled for that year, the commissioner shall rank each school district applying by wealth per student. For purposes of this section, a district's wealth per student is reduced by 10 percent for each state fiscal biennium in which the district did not receive assistance under this subchapter [~~chapter~~].

(b) A district's wealth per student is reduced for purposes of this section if a district has had substantial student enrollment growth in the preceding five-year period. The reduction is in addition to any reduction under Subsection (a) and is computed before the district's wealth per student is reduced under that subsection, if applicable. A district's wealth per student is reduced:

(1) by five percent, if the district has an enrollment growth rate in that period that is 10 percent or more but less than 15 percent;

(2) by 10 percent, if the district has an enrollment growth rate in that period that is 15 percent or more but less than 30 percent; or

(3) by 15 percent, if the district has an enrollment growth rate in that period that is 30 percent or more.

(c) A district's wealth per student is reduced by 10 percent for purposes of this section if the district does not have any outstanding debt at the time the district applies for assistance under this subchapter. The reduction is in addition to any reduction under Subsection (a) or (b) and is computed before the district's wealth per student is reduced under those subsections, if applicable.

(d) The commissioner shall adjust the rankings after making the reductions in wealth per student required by Subsections (a), (b), and (c) [~~this subsection~~].

(e) [~~(b)~~] Beginning with the district with the lowest adjusted wealth per student that has applied for state assistance for the year, the commissioner shall award state assistance to districts that have applied for state assistance in ascending order of adjusted wealth per student. The commissioner shall award the full amount of state assistance to which a district is entitled under this subchapter [~~chapter~~], except that the commissioner may award less than the full amount to the last district for which any funds are available.

(f) [~~(c)~~] Any amount appropriated for the first year of a fiscal biennium that is not awarded to a school district may be used to provide assistance in the following fiscal year.

(g) [~~(d)~~] In this section, "wealth per student" means a school district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, or, if applicable, Section 42.2521, divided by the district's average daily attendance as determined under Section 42.005.

SECTION 1.27. Sections 46.007 and 46.009, Education Code, are amended to read as follows:

Sec. 46.007. REFUNDING BONDS. A school district may use state funds received under this subchapter [~~chapter~~] to pay the principal of and interest on refunding bonds that:

(1) are issued to refund bonds eligible under Section 46.003;

(2) do not have a final maturity date later than the final maturity date of the bonds being refunded;

(3) may not be called for redemption earlier than the earliest call date of the bonds being refunded; and

(4) result in a present value savings, which is determined by computing the net present value of the difference between each scheduled payment on the original bonds and each scheduled payment on the refunding bonds. The present value savings shall be computed at the true interest cost of the refunding bonds.

Sec. 46.009. PAYMENT OF SCHOOL FACILITIES ALLOTMENTS. (a) For each school year, the commissioner shall determine the amount of money to which each school district is entitled under this subchapter [~~chapter~~].

(b) If the amount appropriated for purposes of this subchapter [~~chapter~~] for a year is less than the total amount determined under Subsection (a) for that year, the commissioner shall:

(1) transfer from the Foundation School Program to the instructional facilities program the amount by which the total amount determined under Subsection (a) exceeds the amount appropriated; and

(2) reduce each district's foundation school fund allocations in the manner provided by Section 42.253(h) [~~42.253~~].

(c) Warrants for payments under this subchapter [~~chapter~~] shall be approved and transmitted to school district treasurers or depositories in the same manner as warrants for payments under Chapter 42.

(d) As soon as practicable after September 1 of each year, the commissioner shall distribute to each school district the amount of state assistance under this subchapter [~~chapter~~] to which the commissioner has determined the district is entitled for the school year. The district shall deposit the money in the interest and sinking fund for the bonds for which the assistance is received and shall adopt a tax rate for purposes of debt service that takes into account the balance of the interest and sinking fund.

(e) Section 42.258 applies to payments under this subchapter [~~chapter~~].

(f) If a school district would have received a greater amount under this subchapter [~~chapter~~] for the applicable school year using the adjusted value determined under Section 42.257, the commissioner shall add the difference between the adjusted value and the amount the district received under this subchapter [~~chapter~~] to subsequent distributions to the district under this subchapter [~~chapter~~].

SECTION 1.28. Subsection (a), Section 46.011, Education Code, is amended to read as follows:

(a) If an instructional facility financed by bonds paid with state and local funds under this subchapter [~~chapter~~] is sold before the bonds are fully paid, the school district shall send to the comptroller an amount equal to the district's net proceeds from the sale multiplied by a percentage determined by dividing the amount of state funds under this subchapter used to pay the principal of and interest on the bonds by the total amount of principal and interest paid on the bonds with funds other than the proceeds of the sale.

SECTION 1.29. Chapter 46, Education Code, is amended by adding Subchapters B and C to read as follows:

SUBCHAPTER B. ASSISTANCE WITH PAYMENT OF EXISTING DEBT

Sec. 46.031. RULES. The commissioner may adopt rules for the administration of this subchapter.

Sec. 46.032. ALLOTMENT. (a) Each school district is guaranteed a specified amount per student in state and local funds for each cent of tax effort to pay the principal of and interest on eligible bonds. The amount of state support, subject only to the maximum amount under Section 46.034, is determined by the formula:

EDA = (EDGL X ADA X EDTR X 100) - (EDTR X (DPV/100))

where:

"EDA" is the amount of state funds to be allocated to the district for assistance with existing debt;

"EDGL" is the dollar amount guaranteed level of state and local funds per student per cent of tax effort, which is $35 or a greater amount for any year provided by appropriation;

"ADA" is the number of students in average daily attendance, as determined under Section 42.005, in the district;

"EDTR" is the existing debt tax rate of the district, which is determined by dividing the amount of taxes budgeted to be collected by the district for payment of eligible bonds by the quotient of the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, or, if applicable, under Section 42.2521, divided by 100; and

"DPV" is the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, or, if applicable, under Section 42.2521.

(b) The existing debt tax rate of the district under Subsection (a) may not exceed the rate that would be necessary for the current year, using state funds under Subsection (a), to make payments of principal and interest on the bonds for which the tax is pledged.

Sec. 46.033. ELIGIBLE BONDS. Bonds, including bonds issued under Section 45.006, are eligible to be paid with state and local funds under this subchapter if:

(1) taxes levied to pay the principal of and interest on the bonds were included in the district's audited debt service collections for the 1998-1999 school year; and

(2) the district does not receive state assistance under Subchapter A for payment of the principal and interest on the bonds.

Sec. 46.034. LIMITS ON ASSISTANCE. (a) The existing debt tax rate ("EDTR") under Section 46.032 may not exceed $0.12 per $100 of valuation, or a greater amount for any year provided by appropriation.

(b) The amount of state assistance to which a district is entitled under this subchapter may not exceed the amount to which the district would be entitled at the district's tax rate for the payment of eligible bonds for the final year of the preceding state fiscal biennium.

(c) If the amount required to pay the principal of and interest on eligible bonds in a school year is less than the district's audited debt service collections for the 1998-1999 school year, the district may not receive aid in excess of the amount that, when added to the district's local revenue for the school year, equals the amount required to pay the principal of and interest on the bonds.

(d) To the extent funds are available under Chapter 42 or this chapter in excess of the amount to which school districts are entitled for a school year, the commissioner, before providing additional assistance under Section 42.2522, may provide assistance under this subchapter to a district that would be entitled to the assistance but for the limit on the existing debt tax rate under Subsection (a).

Sec. 46.035. PAYMENT OF ASSISTANCE. Section 46.009 applies to the payment of assistance under this subchapter.

SUBCHAPTER C. REFINANCING

Sec. 46.061. (a) The commissioner by rule may provide for the payment of state assistance under this chapter to refinance school district debt. A refinancing may not increase the cost to the state of providing the assistance.

(b) The commissioner may allocate state assistance provided for a refinancing to Subchapter A, Subchapter B, or both, as appropriate.

SECTION 1.30. Sections 21.401 and 21.402, Education Code, are amended to read as follows:

Sec. 21.401. MINIMUM SERVICE REQUIRED. (a) A contract between a school district and an educator must be for a minimum of 10 months' service.

(a-4) For the 1998-1999 school year, an educator employed under a 10-month contract must provide a minimum of 187 days of service. This subsection expires September 1, 1999.

(b) An educator employed under a 10-month contract must provide a minimum [~~number~~] of 187 days of service [~~as determined by the following formula:~~

[~~MDS = 185 + (0.33 X (R1 - R2)/(R2/185) )~~

[~~where:~~

[~~"MDS" is the minimum number of days of service;~~

[~~"R1" is equal to FSP/ADA as determined under Section 21.402 for the fiscal year; and~~

[~~"R2" is equal to FSP/ADA as determined under Section 21.402 for the 1996-1997 school year~~].

[~~(b-1) Subsection (b) applies beginning with the 1999-2000 school year. This subsection expires January 1, 2000.~~]

(c) [~~The result of the formula prescribed by Subsection (b) shall be rounded to the nearest whole number.~~

[~~(d)~~] The commissioner, as provided by Section 25.081(b), may reduce the number of days of service required by this section. A reduction by the commissioner does not reduce an educator's salary.

Sec. 21.402. MINIMUM SALARY SCHEDULE FOR CERTAIN PROFESSIONAL STAFF [~~CLASSROOM TEACHERS AND FULL-TIME LIBRARIANS~~]. (a) Except as provided by Subsection (d), [~~or~~] (e), or (f), a school district must pay each classroom teacher, [~~or~~] full-time librarian, full-time counselor certified under Subchapter B, or full-time school nurse not less than the minimum monthly salary, based on the employee's level of experience, determined by the following formula:

MS = SF X FS [~~(FSP/ADA)~~]

where:

"MS" is the minimum monthly salary;

"SF" is the applicable salary factor specified by Subsection (c); and

"FS" is the amount, as determined by the commissioner under Subsection (b), of state and local funds per weighted student available to a district eligible to receive state assistance under Section 42.302 with an enrichment tax rate, as defined by Section 42.302, equal to the maximum rate authorized under Section 42.303 [~~"FSP" is the amount appropriated in the General Appropriations Act for the fiscal year for the Foundation School Program, as determined by the commissioner as provided by Subsection (b); and~~

[~~"ADA" is the total estimated average daily attendance, as defined by Section 42.005, used for purposes of the General Appropriations Act for the fiscal year~~].

(b) Not later than June 1 of each year, the commissioner shall determine the amount of state and local funds per weighted student available, for purposes of Subsection (a), to a district described by that subsection for the following school year [~~appropriated for purposes of Chapter 42 for the state fiscal year beginning September 1. The commissioner shall exclude from the determination:~~

[~~(1) amounts designated solely for use in connection with school facilities or for payment of principal of and interest on bonds; and~~

[~~(2) local funds received under Subchapter D, Chapter 41~~].

(c) The salary factors per step are as follows:

| | | | | | |
|---|---|---|---|---|---|
| Years Experience | 0 | 1 | 2 | 3 | 4 |
| Salary Factor | .5596 | .5728 | .5861 | .5993 | .6272 |
| | [~~.8470~~] | [~~.8699~~] | [~~.8928~~] | [~~.9156~~] | [~~.9639~~] |
| Years Experience | 5 | 6 | 7 | 8 | 9 |
| Salary Factor | .6552 | .6831 | .7091 | .7336 | .7569 |
| | [~~1.0122~~] | [~~1.0605~~] | [~~1.1054~~] | [~~1.1477~~] | [~~1.1879~~] |
| Years Experience | 10 | 11 | 12 | 13 | 14 |
| Salary Factor | .7787 | .7996 | .8192 | .8376 | .8552 |
| | [~~1.2256~~] | [~~1.2616~~] | [~~1.2955~~] | [~~1.3273~~] | [~~1.3578~~] |
| Years Experience | 15 | 16 | 17 | 18 | 19 |
| Salary Factor | .8717 | .8874 | .9021 | .9160 | .9293 |
| | [~~1.3862~~] | [~~1.4133~~] | [~~1.4387~~] | [~~1.4628~~] | [~~1.4857~~] |
| Years Experience | 20 and over | | | | |
| Salary Factor | .9418 | | | | |
| | [~~1.5073~~] | | | | |

(c-1) Notwithstanding Subsection (a), for the 1999-2000 and 2000-2001 school years, a classroom teacher, full-time librarian, full-time counselor certified under Subchapter B, or full-time school nurse is entitled to a monthly salary that is at least equal to the greater of:

(1) the sum of:

(A) the monthly salary the employee would have received for the 1999-2000 or 2000-2001 school year, as applicable under the district's salary schedule for the 1998-1999 school year, if that schedule had been in effect for the 1999-2000 or 2000-2001 school year, including any local supplement and any money representing a career ladder supplement the employee would have received in the 1999-2000 or 2000-2001 school year; and

(B) $300; or

(2) the salary to which the employee is entitled under Subsection (a).

(c-2) Subsection (c-1) and this subsection expire September 1, 2001.

(d) A classroom teacher, full-time librarian, full-time counselor certified under Subchapter B, or full-time school nurse employed by a school district in the 2000-2001 school year is, as long as the employee is employed by the same district, entitled to a salary that is at least equal to the salary the employee received for the 2000-2001 school year.

(e) If the minimum monthly salary determined under Subsection (a) for a particular level of experience is less than the minimum monthly salary for that level of experience in the preceding year, the minimum monthly salary is the minimum monthly salary for the preceding year.

(f) [~~(e)~~] Notwithstanding Subsection (a), a teacher or librarian who received a career ladder supplement on August 31, 1993, is entitled to at least the same gross monthly salary the teacher or librarian received for the 1994-1995 school year as long as the teacher or librarian is employed by the same district.

(g) The commissioner may adopt rules to govern the application of this section, including rules that:

(1) require the payment of a minimum salary under this section to a person employed in more than one capacity for which a minimum salary is provided and whose combined employment in those capacities constitutes full-time employment; and

(2) specify the credentials a person must hold to be considered a school nurse under this section.

(h) [~~(f)~~] In this section, "gross monthly salary" must include the amount a teacher or librarian received that represented a career ladder salary supplement under Section 16.057, as that section existed January 1, 1993.

SECTION 1.31. Subsections (a) and (c), Section 21.403, Education Code, are amended to read as follows:

(a) A teacher, [~~or~~] librarian, counselor, or nurse shall advance one step on the minimum salary schedule under Section 21.402 for each year of experience as a teacher, [~~or~~] librarian, counselor, or nurse until step 20 is reached.

(c) The commissioner shall adopt rules for determining the experience for which a teacher, [~~or~~] librarian, counselor, or nurse is to be given credit in placing the teacher, [~~or~~] librarian, counselor, or nurse on the minimum salary schedule. A district shall credit the teacher, [~~or~~] librarian, counselor, or nurse for each year of experience without regard to whether the years are consecutive.

SECTION 1.32. Subsection (b), Section 25.039, Education Code, is amended to read as follows:

(b) The school district in which the students reside shall pay tuition to any district with which it has a contract under this section for each of its students attending school in that district at a grade level for which the district has contracted. The amount of the tuition paid may not exceed the lesser of the amount provided for by Section 25.038 or an amount specified by commissioner rule [~~if the board of trustees of the district in which the students reside finds the excess payment to be in the best interest of the district's educational program~~].

SECTION 1.33. Subsection (b), Section 30.102, Education Code, is amended to read as follows:

(b) A classroom teacher, [~~or~~] full-time librarian, full-time counselor certified under Subchapter B, Chapter 21, or full-time school nurse employed by the commission is entitled to receive as a minimum salary the monthly salary [~~rate~~] specified by Section 21.402. A classroom teacher, [~~or~~] full-time librarian, full-time counselor, or full-time school nurse may be paid, from funds appropriated to the commission, a salary in excess of the minimum specified by that section, but the salary may not exceed the rate of pay for a similar position in the public schools of an adjacent school district.

SECTION 1.34. Subsections (a) and (c), Section 45.104, Education Code, are amended to read as follows:

(a) The board of trustees of any school district may pledge its delinquent taxes levied for maintenance purposes for specific past, current, and future school years as security for a loan, and may evidence any such loan with negotiable notes, and the delinquent taxes pledged shall be applied against the principal and interest of the loan [~~as they are collected~~]. Negotiable notes issued under this subsection must mature not more than 20 years from their date.

(c) Funds secured through loans secured by delinquent taxes may be employed for any legal maintenance expenditure or purpose of the school district, including all costs incurred in connection with:

(1) environmental cleanup and asbestos removal programs implemented by school districts; or

(2) maintenance, repair, rehabilitation, or replacement of heating, air conditioning, water, sanitation, roofing, flooring, electric, or other building systems of existing school properties.

SECTION 1.35. Subsection (a), Section 45.108, Education Code, is amended to read as follows:

(a) Independent or consolidated school districts may borrow money for the purpose of paying maintenance expenses and may evidence those loans with negotiable notes, except that the loans may not at any time exceed 75 percent of the previous year's income. The notes may be payable from and secured by a lien on and pledge of any available funds of the district, including proceeds of a maintenance tax. The term "maintenance expenses" or "maintenance expenditures" as used in this section means any lawful expenditure of the school district other than payment of principal of and interest on bonds. The term includes all costs incurred in connection with environmental cleanup and asbestos cleanup and removal programs implemented by school districts or in connection with the maintenance, repair, rehabilitation, or replacement of heating, air conditioning, water, sanitation, roofing, flooring, electric, or other building systems of existing school properties. Notes issued pursuant to this section [~~an environmental cleanup and asbestos cleanup and removal program~~] may be issued to mature in not more than 20 [~~15~~] years from their date. Notes issued for a term longer than one year must be treated as "debt" as defined in Section 26.012(7), Tax Code.

SECTION 1.36. Section 403.302, Government Code, as amended by S.B. No. 1368, Acts of the 76th Legislature, Regular Session, 1999, is amended by amending Subsections (d) and (h) and adding Subsection (j) to read as follows:

(d) For the purposes of this section, "taxable value" means the market value of all taxable property less:

(1) the total dollar amount of any residence homestead exemptions lawfully granted under Section 11.13(b) or (c), Tax Code, in the year that is the subject of the study for each school district;

(2) one-half of the total dollar amount of any residence homestead exemptions granted under Section 11.13(n), Tax Code, in the year that is the subject of the study for each school district;

(3) the total dollar amount of any exemptions granted before May 31, 1993, within a reinvestment zone under agreements authorized by Chapter 312, Tax Code;

(4) [~~(3)~~] the total dollar amount of any captured appraised value of property that is located in a reinvestment zone on August 31, 1999, generates a tax increment paid into a tax increment fund, and is eligible for tax increment financing under Chapter 311, Tax Code, under a reinvestment zone financing plan approved under Section 311.011(d), Tax Code, before September 1, 1999;

(5) [~~(4)~~] the total dollar amount of any exemptions granted under Section 11.251, Tax Code;

(6) [~~(5)~~] the difference between the comptroller's estimate of the market value and the productivity value of land that qualifies for appraisal on the basis of its productive capacity, except that the productivity value estimated by the comptroller may not exceed the fair market value of the land;

(7) [~~(6)~~] the portion of the appraised value of residence homesteads of the elderly on which school district taxes are not imposed in the year that is the subject of the study, calculated as if the residence homesteads were appraised at the full value required by law;

(8) [~~(7)~~] a portion of the market value of property not otherwise fully taxable by the district at market value because of action required by statute or the constitution of this state that, if the tax rate adopted by the district is applied to it, produces an amount equal to the difference between the tax that the district would have imposed on the property if the property were fully taxable at market value and the tax that the district is actually authorized to impose on the property, if this subsection does not otherwise require that portion to be deducted;

(9) [~~(8)~~] the market value of all tangible personal property, other than manufactured homes, owned by a family or individual and not held or used for the production of income;

(10) [~~(9)~~] the appraised value of property the collection of delinquent taxes on which is deferred under Section 33.06, Tax Code;

(11) [~~(10)~~] the portion of the appraised value of property the collection of delinquent taxes on which is deferred under Section 33.065, Tax Code; and

(12) [~~(11)~~] the amount by which the market value of a residence homestead to which Section 23.23, Tax Code, applies exceeds the appraised value of that property as calculated under that section.

(h) For purposes of Section [~~Sections 41.0011 and~~] 42.2511, Education Code, [~~for the 1996 and 1997 tax years,~~] the comptroller shall certify to the commissioner of education:

(1) a final value for each school district computed on a residence homestead exemption under Section 1-b(c), Article VIII, Texas Constitution, of $5,000; and

(2) a final value for each school district computed on:

(A) a residence homestead exemption under Section 1-b(c), Article VIII, Texas Constitution, of $15,000; and

(B) the effect of the additional limitation on tax increases under Section 1-b(d), Article VIII, Texas Constitution, as proposed by H.J.R. No. 4, 75th Legislature, Regular Session, 1997.

(j) For purposes of Section 42.2522, Education Code, the comptroller shall certify to the commissioner of education:

(1) a final value for each school district computed without any deduction for residence homestead exemptions granted under Section 11.13(n), Tax Code; and

(2) a final value for each school district computed after deducting one-half the total dollar amount of residence homestead exemptions granted under Section 11.13(n), Tax Code.

SECTION 1.37. Subdivision (8), Section 271.003, Local Government Code, is amended to read as follows:

(8) "Personal property" includes appliances, equipment, facilities, and furnishings, or an interest in personal property, whether movable or fixed, considered by the governing body of the governmental agency to be necessary, useful, or appropriate to one or more purposes of the governmental agency. The term includes all materials and labor incident to the installation of that personal property. The term does not include real property.

SECTION 1.38. Section 271.005, Local Government Code, is amended by adding Subsection (b) to read as follows:

(b) The governing body of a governmental agency may contract under this section for materials and labor incident to the installation of personal property.

SECTION 1.39. Subsection (b), Section 271.007, Local Government Code, is amended to read as follows:

(b) After the contract has been approved and registered as provided by this section, the contract is valid and is incontestable for any cause. The legal obligation of the lessor, vendor, or supplier of personal property or of the person installing personal property to the governmental agency is not diminished in any respect by the approval and registration of the contract.

SECTION 1.40. Section 26.08, Tax Code, is amended by amending Subsection (i) and adding Subsections (j) through (n) to read as follows:

(i) For purposes of this section, the rollback tax rate of a school district is the sum of:

(1) the tax rate that, applied to the current total value for the district, would impose taxes in an amount that, when added to state funds that would be distributed to the district under Chapter 42, Education Code, for the school year beginning in the current tax year using that tax rate, would provide the same amount of state funds distributed under Chapter 42 and maintenance and operations taxes of the district per student in weighted average daily attendance for that school year that would have been [~~was~~] available to the district in the preceding year if the funding elements for Chapters 41 and 42, Education Code, for the current year had been in effect for the preceding year;

(2) the rate of $0.06 [~~$0.08~~] per $100 of taxable value; and

(3) the district's current debt rate.

(j) For purposes of Subsection (i), the amount of state funds that would have been available to a school district in the preceding year is computed using the maximum tax rate for the current year under Section 42.253(e), Education Code.

(k) Except as provided by Subsection (l), for purposes of this section, for the 1999 tax year, the rollback tax rate of a school district is the sum of:

(1) the tax rate that, applied to the current total value for the district, would impose maintenance and operations taxes in an amount that, when added to the amount of state funds that would be distributed to the district under Chapter 42, Education Code, for the 1999-2000 school year using that tax rate and a guaranteed level of state and local funds per weighted student per cent of tax effort under Section 42.302, Education Code, of $23.10, would provide the same amount of state funds distributed under Chapter 42 and maintenance and operations taxes of the district per student in weighted average daily attendance for the 1999-2000 school year that would have been available to the district in the 1999-2000 school year, using:

(A) the maximum tax rate for the 1999-2000 school year under Section 42.253(e), Education Code, for which state funding would be provided; and

(B) the guaranteed level of state and local funds per weighted student per cent of tax effort under Section 42.302, Education Code, for the 1998-1999 school year and the basic allotment under Section 42.101, Education Code, for the 1999-2000 school year;

(2) the tax rate that, applied to the current total value for the district, would impose taxes in an amount that would provide the same amount of funds as the taxes paid by the district during the 1998-1999 school year under 26 U.S.C. Section 3111(a), and its subsequent amendments, for employees covered by the Social Security retirement program, if the district is currently required to participate in that program;

(3) the rate of $0.03 per $100 of taxable value; and

(4) the district's current debt rate.

(l) Subsection (i) applies to a school district that is required to take action under Chapter 41, Education Code, to reduce its wealth per student to the equalized wealth

level, except that the amount of $0.03 is substituted for the amount specified by Subsection (i)(2).

(m) For purposes of Subsections (i) and (k), the amount of maintenance and operations taxes and state funds available to a school district does not include amounts provided to the district in accordance with Section 42.2512 or 42.2513, Education Code.

(n) Subsections (k)-(m) and this subsection expire September 1, 2000.

SECTION 1.41. In placing a counselor or school nurse on the minimum salary schedule in accordance with Sections 21.402 and 21.403, Education Code, as amended by this Act, a school district shall credit the counselor or nurse for each year of experience in accordance with rules adopted by the commissioner of education, regardless of whether the experience was gained before, during, or after the 1999-2000 school year.

SECTION 1.42. (a) In coordination with the comptroller of public accounts of the State of Texas, the Charles A. Dana Center at The University of Texas at Austin shall conduct a study of variations in known resource costs and costs of education beyond the control of a school district.

(b) Not later than November 1, 2000, the center shall make recommendations to the 77th Legislature as to methods of adjusting funding under Chapter 42, Education Code, to reflect variations in resource costs and costs of education.

(c) The comptroller of public accounts of the State of Texas, the Texas Education Agency, and Texas A&M University shall assist the center in conducting the study and making the recommendations.

SECTION 1.43. (a) A portion of the amounts appropriated in Article III, H.B. No. 1, Acts of the 76th Legislature, Regular Session, 1999, to the Texas Education Agency is allocated as provided by this subsection, notwithstanding the provisions of H.B. No. 1:

(1) for the fiscal year ending August 31, 2000, $1,715,000,000 is allocated to Strategy A.2.1.: Foundation School Program, and for the fiscal year ending August 31, 2001, $1,785,000,000 is allocated to that strategy;

(2) for each fiscal year of the biennium ending August 31, 2001, $100 million is allocated to Strategy B.1.1.: Instructional Excellence, for kindergarten and prekindergarten grant programs authorized by Section 29.155, Education Code, as added by this Act;

(3) for each fiscal year of the biennium ending August 31, 2001, $7.5 million is allocated to Strategy B.1.1.: Instructional Excellence, for implementation of an educational component to Head Start, as authorized by Section 29.156, Education Code, as added by this Act;

(4) for each fiscal year of the biennium ending August 31, 2001, $42.5 million in each year of the biennium is allocated to Strategy B.1.1.: Instructional Excellence, for the Basic Skills Programs for High School Students, as authorized by Section 29.086, Education Code, as added by this Act; and

(5) for the fiscal year ending August 31, 2001, the unexpended balance of an amount allocated under Subdivision (2), (3), or (4) of this subsection for the fiscal year ending August 31, 2000, is allocated for the same purpose.

(b) As provided by Section 42.2511, Education Code, as amended by this Act, the commissioner of education shall allocate transition aid for total revenue declines associated with the increase in the homestead exemption under Subsection (d), Section 1-b, Article VIII, Texas Constitution, as proposed by H.J.R. No. 4,

75th Legislature, Regular Session, 1997, in amounts estimated to be $45 million for each fiscal year of the biennium ending August 31, 2001.

(c) For the biennium ending August 31, 2001, the commissioner of education shall distribute amounts appropriated in Article III, H.B. No. 1, Acts of the 76th Legislature, Regular Session, 1999, to the Texas Education Agency, in Article III of that Act, for purposes of the Instructional Facilities Allotment under Subchapter A, Chapter 46, Education Code, as amended by this Act, as follows:

(1) for the fiscal year ending August 31, 2000, the commissioner shall use $50 million of the funds appropriated in Strategy A.2.3.: Maximizing School Facilities, to assist school districts under the provisions of Subchapter A, Chapter 46, Education Code, as amended by this Act, to issue new debt for public school facilities, and for the fiscal year ending August 31, 2001, the commissioner shall use $50 million to assist school districts to issue new debt for public school facilities and $50 million to assist school districts to make debt service payments on debt issued in the fiscal year ending August 31, 2000; and

(2) the commissioner shall use the remaining appropriation in Strategy A.2.3.: Maximizing School Facilities, to meet the financial obligation incurred by the state under Subchapter A, Chapter 46, Education Code, as amended by this Act, in the biennium ending August 31, 1999.

(d) The amount allocated under Rider 10 following the appropriation to the Texas Education Agency in Article III, H.B. No. 1, Acts of the 76th Legislature, Regular Session, 1999, is reduced from $160 million to $133 million, and that amount shall be distributed by the commissioner of education in a manner consistent with the changes made by this Act in amending Subsection (b), Section 41.002, Education Code, repealing Subsection (c), Section 41.002, Education Code, and adding Section 42.2521, Education Code, relating to the compensation of school districts for property value decline.

(e) The amount specified in Rider 50 following the appropriation to the Texas Education Agency in Article III, H.B. No. 1, Acts of the 76th Legislature, Regular Session, 1999, as the guaranteed level per weighted student per cent of tax effort is adjusted to conform with Subchapter F, Chapter 42, Education Code, as amended by this Act.

(f) For each fiscal year of the biennium ending August 31, 2001, from amounts appropriated in Article III, H.B. No. 1, Acts of the 76th Legislature, Regular Session, 1999, to the Texas Education Agency, the commissioner of education may expend an amount not to exceed $25 million in payment of the allotment provided by Section 42.158, Education Code, as added by this Act, for new instructional facilities.

(g) The Legislative Budget Board shall adjust the amounts specified in Rider 2 following the appropriation to the Texas Education Agency in Article III, H.B. No. 1, Acts of the 76th Legislature, Regular Session, 1999, in compliance with the changes specified by this section.

(h) The Legislative Budget Board shall adjust the amount specified as attendance credit revenues in the method of finance for amounts appropriated in Article III, H.B. No. 1, Acts of the 76th Legislature, Regular Session, 1999, to the Texas Education Agency to account for applicable provisions of this Act and for updated projections of those revenues.

(i) The Legislative Budget Board shall adjust performance measure targets in the appropriations in Article III, H.B. No. 1, Acts of the 76th Legislature, Regular Session, 1999, to the Texas Education Agency to reflect the provisions of this Act.

(j) Strategy A.2.2.: Public Education, as provided in the appropriations in Article III, H.B. No. 1, Acts of the 76th Legislature, Regular Session, 1999, to the Texas Education Agency, is repealed.

SECTION 1.44. In addition to other amounts appropriated for the fiscal biennium ending August 31, 2001, the sum of $60 million is appropriated, for the fiscal year ending August 31, 2000, from the general revenue fund to the Texas Education Agency for purposes of the foundation school program, and the unexpended balance of that appropriation is appropriated, for the fiscal year ending August 31, 2001, from the general revenue fund to the Texas Education Agency for the same purposes.

ARTICLE 2. PROGRAM IMPROVEMENTS, DISCIPLINE, AND SOCIAL PROMOTION

SECTION 2.01. Subchapter E, Chapter 29, Education Code, is amended by adding Sections 29.155 and 29.156 to read as follows:

Sec. 29.155. KINDERGARTEN AND PREKINDERGARTEN GRANTS. (a) From amounts appropriated for the purposes of this section, the commissioner may make grants to school districts and open-enrollment charter schools to implement or expand kindergarten and prekindergarten programs by:

(1) operating an existing half-day kindergarten or prekindergarten program on a full-day basis; or

(2) implementing a prekindergarten program at a campus that does not have a prekindergarten program.

(b) A school district or open-enrollment charter school may use funds received under this section to employ teachers and other personnel for a kindergarten or prekindergarten program and acquire curriculum materials or equipment, including computers, for use in kindergarten and prekindergarten programs.

(c) To be eligible for a grant under this section, a school district or open-enrollment charter school must apply to the commissioner in the manner and within the time prescribed by the commissioner.

(d) In awarding grants under this section, the commissioner shall give priority to districts and open-enrollment charter schools in which the level of performance of students on the assessment instruments administered under Section 39.023 to students in grade three is substantially below the average level of performance on those assessment instruments for all school districts in the state.

(e) The commissioner may adopt rules to administer this section.

(f) Notwithstanding Section 7.056(e)(3)(I), the commissioner may waive a requirement prescribed by this subchapter to the extent necessary to implement a grant awarded under this section or Section 29.156.

Sec. 29.156. GRANTS FOR EDUCATIONAL COMPONENT OF HEAD START. (a) From funds appropriated for the purpose, the commissioner shall make grants for use in providing an educational component to federal Head Start programs or similar government-funded early childhood care and education programs.

(b) The commissioner shall adopt rules for implementation of this section, including rules prescribing eligibility criteria for receipt of a grant and for expenditure of grant funds.

SECTION 2.02. Subchapter C, Chapter 29, Education Code, is amended by adding Section 29.086 to read as follows:

Sec. 29.086. BASIC SKILLS PROGRAMS FOR HIGH SCHOOL STUDENTS. (a) A school district may apply to the commissioner for funding of special programs for students in grade nine who are at risk of not earning sufficient credit or who have

not earned sufficient credit to advance to grade 10 and who fail to meet minimum skills levels established by the commissioner. A school district may, with the consent of a student's parent or guardian, assign a student to a program under this section. A program under this section may not exceed 210 instructional days.

(b) A program under this section must emphasize basic skills in areas of the required curriculum under Section 28.002 and must offer students the opportunity to increase credits required for high school graduation under state or school district policy. A program under this section may be provided by a school district or an entity contracting with a school district to provide the program.

(c) The commissioner shall award funds to districts in accordance with a competitive grant process developed by the commissioner. A grant may be made to a consortium of school districts. The criteria by which the commissioner awards a grant must include the quality of the proposed program and the school district's demonstrated need for the program. An approved program must include criteria that permit measurement of student progress, and the district shall:

(1) annually evaluate the progress of students in the program; and

(2) submit the results of the evaluation to the commissioner at the end of the school year.

(d) The commissioner shall establish minimum levels of student enrollment and standards of student progress required for continued funding of a program under this section. The commissioner may eliminate funding for a program in a subsequent school year if the program fails to achieve sufficient levels of student progress.

(e) The amount of a grant under this section must take into account funds distributed to the school district under Chapter 42.

(f) The commissioner may adopt rules for the administration of programs under this section.

SECTION 2.03. Section 5.001, Education Code, is amended by adding Subdivision (8) to read as follows:

(8) "Residential facility" means:

(A) a facility operated by a state agency or political subdivision, including a child placement agency, that provides 24-hour custody or care of a person 22 years of age or younger, if the person resides in the facility for detention, treatment, foster care, or any noneducational purpose; and

(B) any person or entity that contracts with or is funded, licensed, certified, or regulated by a state agency or political subdivision to provide custody or care for a person under Paragraph (A).

SECTION 2.04. Subsection (b), Section 12.104, Education Code, is amended to read as follows:

(b) An open-enrollment charter school is subject to:

(1) a provision of this title establishing a criminal offense; and

(2) a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to:

(A) the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with this subchapter as determined by the commissioner;

(B) criminal history records under Subchapter C, Chapter 22;

(C) reading instruments and accelerated reading instruction programs under Section 28.006;

(D) satisfactory performance on assessment instruments and to accelerated instruction under Section 28.0211;

(E) high school graduation under Section 28.025;

(F) [~~(D)~~] special education programs under Subchapter A, Chapter 29;

(G) [~~(E)~~] bilingual education under Subchapter B, Chapter 29;

(H) [~~(F)~~] prekindergarten programs under Subchapter E, Chapter 29;

(I) [~~(G)~~] extracurricular activities under Section 33.081;

(J) [~~(H)~~] health and safety under Chapter 38; and

(K) [~~(I)~~] public school accountability under Subchapters B, C, D, and G, Chapter 39.

SECTION 2.05. Section 21.103, Education Code, is amended to read as follows:

Sec. 21.103. PROBATIONARY CONTRACT: TERMINATION. (a) The board of trustees of a school district may terminate the employment of a teacher employed under a probationary contract at the end of the contract period if in the board's judgment the best interests of the district will be served by terminating the employment. The board of trustees must give notice of its decision [~~intention~~] to terminate the employment to the teacher not later than the 45th day before the last day of instruction required under the contract. The board's decision is final and may not be appealed.

(b) If the board of trustees fails to give the notice of its decision [~~intention~~] to terminate the teacher's employment within the time prescribed by Subsection (a), the board must employ the probationary teacher in the same capacity under:

(1) a probationary contract for the following school year, if the teacher has been employed by the district under a probationary contract for less than three consecutive school years; or

(2) a continuing or term contract, according to district policy, if the teacher has been employed by the district under a probationary contract for three consecutive school years.

SECTION 2.06. Subsection (a), Section 21.451, Education Code, is amended to read as follows:

(a) The staff development provided by a school district must be conducted in accordance with minimum standards developed by the commissioner for program planning, preparation, and improvement. The staff development:

(1) must include training in technology, [~~training and training in~~] conflict resolution, and discipline strategies, including classroom management, district discipline policies, and the student code of conduct adopted under Section 37.001 and Chapter 37; and

(2) may include instruction as to what is permissible under law, including opinions of the United States Supreme Court, in regard to prayers in public school.

SECTION 2.07. (a) Chapter 21, Education Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. TEXAS TROOPS TO TEACHERS PROGRAM

Sec. 21.501. DEFINITION. In this subchapter, "program" means the Texas Troops to Teachers Program.

Sec. 21.502. ESTABLISHMENT OF PROGRAM. The agency shall establish a program to:

(1) assist persons who have served in the armed forces of the United States and are separated from active duty to obtain certification as an elementary or secondary school teacher in this state; and

(2) facilitate the employment of those persons by school districts that have a shortage of teachers.

Sec. 21.503. ELIGIBILITY. A person is eligible for the program if the person:

(1) has served in the armed forces of the United States;

(2) is honorably discharged, retired, or released from active duty on or after October 1, 1990, after at least six years of continuous active duty service immediately before the discharge, retirement, or release;

(3) has received a baccalaureate or advanced degree from a public or private institution of higher education accredited by a regional accrediting agency or group that is recognized by a nationally recognized accreditation board; and

(4) satisfies any other criteria for selection jointly prescribed by the agency and the State Board for Educator Certification.

Sec. 21.504. INFORMATION AND APPLICATIONS. (a) The agency shall develop an application for the program.

(b) The agency and the State Board for Educator Certification shall distribute the applications and information regarding the program.

Sec. 21.505. SELECTION OF PARTICIPANTS. (a) The agency shall select persons to participate in the program on the basis of applications submitted to the agency.

(b) Each application must be submitted:

(1) in the form and contain the information the agency requires; and

(2) in a timely manner.

(c) An application is considered to be submitted in a timely manner for purposes of Subsection (b)(2) if the application is submitted:

(1) not later than October 5, 1999, in the case of an applicant discharged, retired, or released from active duty before January 19, 1999; or

(2) except as provided by Subdivision (1), not later than the first anniversary of the date of the applicant's discharge, retirement, or release from active duty.

Sec. 21.506. LIMITATION ON IMPLEMENTATION. The agency may not select a person to participate in the program unless the agency has sufficient state appropriations to pay the stipend provided by Section 21.509 at the time of the selection.

Sec. 21.507. PREFERENCES. (a) In selecting persons to participate in the program, the agency shall give preference to a person who:

(1) has significant educational or military experience in science, mathematics, or engineering and agrees to seek employment as a teacher in one of those subjects in a public elementary or secondary school in this state; or

(2) has significant educational or military experience in a field other than science, mathematics, or engineering identified by the agency as a field important for state educational objectives and agrees to seek employment as a teacher in a subject related to that field in a public elementary or secondary school in this state.

(b) The commissioner shall determine the level of experience considered significant for purposes of this section.

Sec. 21.508. AGREEMENT. A person selected to participate in the program must enter into a written agreement with the agency under which the person agrees to:

(1) obtain, within the period the agency by rule requires, certification as an elementary or secondary school teacher in this state; and

(2) accept, during the first school year that begins after the date the person becomes certified, an offer of full-time employment as an elementary or secondary school teacher with a school district in this state.

Sec. 21.509. STIPEND. The agency shall pay to each participant in the program a stipend of $5,000.

Sec. 21.510. REIMBURSEMENT. (a) A participant in the program who fails to obtain certification or employment as required in the agreement under Section 21.508 or who voluntarily leaves or is terminated for cause from the employment after teaching in a public elementary or secondary school in this state for less than five school years shall reimburse the agency for the portion of the stipend that bears the same ratio to the amount of the stipend as the unserved portion of required service bears to the five years of required service.

(b) The obligation to reimburse the agency under this section is, for all purposes, a debt to the state. A discharge in bankruptcy under Title 11, United States Code, does not release a participant from the obligation to reimburse the agency. The amount owed bears interest at the rate equal to the highest rate being paid by the United States on the day the reimbursement is determined to be due for securities that have maturities of 90 days or less, and the interest accrues from the day the participant receives notice of the amount due.

(c) For purposes of this section, a participant in the program is not considered to be in violation of an agreement under Section 21.508 during any period in which the participant:

(1) is pursuing a full-time course of study related to the field of teaching at a public or private institution of higher education approved by the State Board for Educator Certification;

(2) is serving on active duty as a member of the armed forces of the United States;

(3) is temporarily totally disabled for a period not to exceed three years as established by sworn affidavit of a qualified physician;

(4) is unable to secure employment for a period not to exceed one year because of care required by a disabled spouse;

(5) is seeking and unable to find full-time employment as a teacher in a public elementary or secondary school for a single period not to exceed 27 months; or

(6) satisfies the provisions of any additional reimbursement exception adopted by the agency.

(d) A participant is excused from reimbursement under Subsection (a) if:

(1) the participant becomes permanently totally disabled as established by sworn affidavit of a qualified physician; or

(2) the agency waives reimbursement in the case of extreme hardship to the participant.

Sec. 21.511. The commissioner shall adopt rules to implement this subchapter.

(b) If the commissioner of education determines that federal funds are available for a federal program with the general purposes of Subchapter K, Chapter 21, Education Code, as added by Subsection (a) of this section, such as for a program under 10 U.S.C. Section 1151, the commissioner shall discontinue the Texas Troops to Teachers Program and shall file notice of that discontinuation with the secretary of state to be published in the Texas Register.

(c) The commissioner of education may utilize discretionary funds or nonutilized balances to pay stipends for a program with the general purposes of Subchapter K, Chapter 21, Education Code, as added by Subsection (a) of this section, if federal funds, such as the funds provided for a program under 10 U.S.C. Section 1151, are not available or cease to be authorized.

SECTION 2.08. Subsection (b), Section 25.001, Education Code, is amended to read as follows:

(b) The board of trustees of a school district or its designee shall admit into the public schools of the district free of tuition a person who is over five and younger than 21 years of age on the first day of September of the school year in which admission is sought if:

(1) the person and either parent of the person reside in the school district;

(2) the person does not reside in the school district but a parent of the person resides in the school district and that parent is a joint managing conservator or the sole managing conservator or possessory conservator of the person;

(3) the person and the person's guardian or other person having lawful control of the person under a court order reside within the school district;

(4) the person has established a separate residence under Subsection (d);

(5) the person is homeless, as defined by 42 U.S.C. Section 11302, regardless of the residence of the person, of either parent of the person, or of the person's guardian or other person having lawful control of the person;

(6) the person is a foreign exchange student placed with a host family that resides in the school district by a nationally recognized foreign exchange program, unless the school district has applied for and been granted a waiver by the commissioner under Subsection (e);

(7) the person resides at a residential facility located in the district; or

(8) [~~(7)~~] the person resides in the school district and is 18 years of age or older or the person's disabilities of minority have been removed.

SECTION 2.09. Subsection (a), Section 25.003, Education Code, is amended to read as follows:

(a) Notwithstanding any other provision of this code, a school district shall charge tuition for a child who resides at a residential facility [~~child-care institution~~] and whose maintenance expenses are paid in whole or in part by another state or the United States [~~may not be admitted to a public school unless the child-care institution pays tuition for the child equal to the actual cost of educating a child enrolled in a similar educational program in the district~~].

SECTION 2.10. Subsection (d), Section 25.085, Education Code, is amended to read as follows:

(d) Unless specifically exempted by Section 25.086, a student enrolled in a school district must attend:

(1) an extended-year program for which the student is eligible that is provided by the district for students identified as likely not to be promoted to the next grade level or tutorial classes required by the district under Section 29.084;

(2) an accelerated reading instruction program to which the student is assigned under Section 28.006(g);

(3) an accelerated instruction program to which the student is assigned under Section 28.0211; or

(4) a basic skills program to which the student is assigned under Section 29.086.

SECTION 2.11. Section 28.006, Education Code, is amended by amending Subsection (d) and adding Subsections (g) through (m) to read as follows:

(d) The superintendent of each school district shall:

(1) report to the commissioner and the board of trustees of the district the results of the reading instruments; and

(2) report, in writing, to a student's parent or guardian the student's results on the reading instrument.

(g) A school district shall notify the parent or guardian of each student in kindergarten or first or second grade who is determined, on the basis of reading instrument results, to be at risk for dyslexia or other reading difficulties. The district shall implement an accelerated reading instruction program that provides reading instruction that addresses reading deficiencies to those students and shall determine the form, content, and timing of that program. The admission, review, and dismissal committee of a student who participates in a district's special education program under Subchapter B, Chapter 29, and who does not perform satisfactorily on a reading instrument under this section shall determine the manner in which the student will participate in an accelerated reading instruction program under this subsection.

(h) The school district shall make a good faith effort to ensure that the notice required under this section is provided either in person or by regular mail and that the notice is clear and easy to understand and is written in English and in the parent or guardian's native language.

(i) The commissioner shall certify, not later than July 1 of each school year or as soon as practicable thereafter, whether sufficient funds have been appropriated statewide for the purposes of this section. A determination by the commissioner is final and may not be appealed. For purposes of certification, the commissioner may not consider Foundation School Program funds.

(j) No more than 15 percent of the funds certified by the commissioner under Subsection (i) may be spent on indirect costs. The commissioner shall evaluate the programs that fail to meet the standard of performance under Section 39.051(b)(7) and may implement sanctions under Subchapter G, Chapter 39. The commissioner may audit the expenditures of funds appropriated for purposes of this section. The use of the funds appropriated for purposes of this section shall be verified as part of the district audit under Section 44.008.

(k) The provisions of this section relating to parental notification of a student's results on the reading instrument and to implementation of an accelerated reading instruction program may be implemented only if the commissioner certifies that funds have been appropriated during a school year for administering the accelerated reading instruction program specified under this section.

(l) Each district shall provide the accelerated reading instruction under Subsection (g) to students in:

(1) kindergarten during the 1999-2000 school year;

(2) kindergarten and first grade during the 2000-2001 school year; and

(3) kindergarten and first and second grades beginning with the 2001-2002 school year.

(m) Subsection (l) and this subsection expire January 1, 2002.

SECTION 2.12. Subchapter B, Chapter 28, Education Code, is amended by adding Section 28.0211 to read as follows:

Sec. 28.0211. SATISFACTORY PERFORMANCE ON ASSESSMENT INSTRUMENTS REQUIRED; ACCELERATED INSTRUCTION. (a) Except as provided by Subsection (b) or (e), a student may not be promoted to:

(1) the fourth grade program to which the student would otherwise be assigned if the student does not perform satisfactorily on the third grade reading assessment instrument under Section 39.023;

(2) the sixth grade program to which the student would otherwise be assigned if the student does not perform satisfactorily on the fifth grade mathematics and reading assessment instruments under Section 39.023; or

(3) the ninth grade program to which the student would otherwise be assigned if the student does not perform satisfactorily on the eighth grade mathematics and reading assessment instruments under Section 39.023.

(b) A school district shall provide to a student who initially fails to perform satisfactorily on an assessment instrument specified under Subsection (a) at least two additional opportunities to take the assessment instrument. A school district may administer an alternate assessment instrument to a student who has failed an assessment instrument specified under Subsection (a) on the previous two opportunities. Notwithstanding any other provision of this section, a student may be promoted if the student performs at grade level on an alternate assessment instrument under this subsection that is appropriate for the student's grade level and approved by the commissioner.

(c) Each time a student fails to perform satisfactorily on an assessment instrument specified under Subsection (a), the school district in which the student attends school shall provide to the student accelerated instruction in the applicable subject area, including reading instruction for a student who fails to perform satisfactorily on a reading assessment instrument. After a student fails to perform satisfactorily on an assessment instrument a second time, a grade placement committee shall be established to prescribe the accelerated instruction the district shall provide to the student before the student is administered the assessment instrument the third time. The grade placement committee shall be composed of the principal or the principal's designee, the student's parent or guardian, and the teacher of the subject of an assessment instrument on which the student failed to perform satisfactorily. The district shall notify the parent or guardian of the time and place for convening the grade placement committee and the purpose of the committee. An accelerated instruction group administered by a school district under this section may not have a ratio of more than 10 students for each teacher.

(d) In addition to providing accelerated instruction to a student under Subsection (c), the district shall notify the student's parent or guardian of:

(1) the student's failure to perform satisfactorily on the assessment instrument;

(2) the accelerated instruction program to which the student is assigned; and

(3) the possibility that the student might be retained at the same grade level for the next school year.

(e) A student who, after at least three attempts, fails to perform satisfactorily on an assessment instrument specified under Subsection (a) shall be retained at the same grade level for the next school year in accordance with Subsection (a). The student's parent or guardian may appeal the student's retention by submitting a request to the grade placement committee established under Subsection (c). The school district shall give the parent or guardian written notice of the opportunity to appeal. The grade placement committee may decide in favor of a student's promotion only if the committee concludes, using standards adopted by the board of trustees, that if promoted and given accelerated instruction, the student is likely to perform at grade level. A student may not be promoted on the basis of the grade placement committee's decision unless that decision is unanimous. The commissioner by rule shall establish a time line for making the placement determination. This subsection does not create

a property interest in promotion. The decision of the grade placement committee is final and may not be appealed.

(f) A school district shall provide to a student who, after three attempts, has failed to perform satisfactorily on an assessment instrument specified under Subsection (a) accelerated instruction during the next school year as prescribed by an educational plan developed for the student by the student's grade placement committee established under Subsection (c). The district shall provide that accelerated instruction regardless of whether the student has been promoted or retained. The educational plan must be designed to enable the student to perform at the appropriate grade level by the conclusion of the school year. During the school year, the student shall be monitored to ensure that the student is progressing in accordance with the plan. The district shall administer to the student the assessment instrument for the grade level in which the student is placed at the time the district regularly administers the assessment instruments for that school year.

(g) This section does not preclude the retention at a grade level, in accordance with state law or school district policy, of a student who performs satisfactorily on an assessment instrument specified under Subsection (a).

(h) In each instance under this section in which a school district is specifically required to provide notice to a parent or guardian of a student, the district shall make a good faith effort to ensure that such notice is provided either in person or by regular mail and that the notice is clear and easy to understand and is written in English or the parent or guardian's native language.

(i) The admission, review, and dismissal committee of a student who participates in a district's special education program under Subchapter B, Chapter 29, and who does not perform satisfactorily on an assessment instrument specified under Subsection (a) and administered under Section 39.023(a) or (b) shall determine:

(1) the manner in which the student will participate in an accelerated instruction program under this section; and

(2) whether the student will be promoted or retained under this section.

(j) A school district or open-enrollment charter school shall provide students required to attend accelerated programs under this section with transportation to those programs if the programs occur outside of regular school hours.

(k) The commissioner shall adopt rules as necessary to implement this section, including rules concerning when school districts shall administer assessment instruments required under this section and which administration of the assessment instruments will be used for purposes of Section 39.051.

(l) The commissioner shall issue a report to the legislature not later than December 1, 2000, that reviews the enrollment of students in accelerated instruction and the quality and availability of accelerated instruction programs, including accelerated instruction-related teacher professional development programs.

(m) The commissioner shall certify, not later than July 1 of each school year or as soon as practicable thereafter, whether sufficient funds have been appropriated statewide for the purposes of this section. A determination by the commissioner is final and may not be appealed. For purposes of certification, the commissioner may not consider Foundation School Program funds. This section may be implemented only if the commissioner certifies that sufficient funds have been appropriated during a school year for administering the accelerated instruction programs specified under this section.

(n) This section applies to the assessment instrument administered to students in:

(1) the third grade beginning with the 2002-2003 school year;

(2) the fifth grade beginning with the 2004-2005 school year; and

(3) the eighth grade beginning with the 2007-2008 school year.

(o) Subsection (n) and this subsection expire January 1, 2008.

SECTION 2.13. Section 29.012, Education Code, is amended to read as follows:

Sec. 29.012. RESIDENTIAL [~~INTERMEDIATE CARE~~] FACILITIES. (a) Except as provided by Subsection (b)(2), not later than the third day after the date a person 22 years of age or younger is placed in a residential facility, the residential facility shall:

(1) if the person is three years of age or older, notify the school district in which the facility is located, unless the facility is an open-enrollment charter school; or

(2) if the person is younger than three years of age, notify a local early intervention program in the area in which the facility is located.

(b) An agency or political subdivision that funds, licenses, certifies, contracts with, or regulates a residential facility must:

(1) require the facility to comply with Subsection (a) as a condition of the funding, licensing, certification, or contracting; or

(2) if the agency or political subdivision places a person in a residential facility, provide the notice under Subsection (a) for that person.

(c) For purposes of enrollment in a school, a person who resides in a residential facility is considered a resident of the school district or geographical area served by the open-enrollment charter school in which the facility is located.

(d) The Texas Education Agency, [~~and~~] the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Services, the Texas Department of Health, the Department of Protective and Regulatory Services, the Interagency Council on Early Childhood Intervention, the Texas Commission on Alcohol and Drug Abuse, the Texas Juvenile Probation Commission, and the Texas Youth Commission by a cooperative effort shall develop and by rule adopt a memorandum of understanding. The memorandum must:

(1) establish [~~that establishes~~] the respective responsibilities of school districts and of residential [~~intermediate care~~] facilities for [~~mentally retarded persons for~~] the provision of a free, appropriate public education, as required by the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) and its subsequent amendments, including each requirement of 20 U.S.C. Section 1412(a)(12), [~~classrooms and educationally related therapy~~] for children with disabilities [~~students~~] who reside in those facilities;

(2) coordinate regulatory and planning functions of the parties to the memorandum;

(3) establish criteria for determining when a public school can provide educational services and when a residential facility must provide the services;

(4) provide for appropriate educational space when a residential facility must provide educational services;

(5) establish measures designed to ensure the safety of students and teachers; and

(6) provide for binding arbitration consistent with Chapter 2009, Government Code, and Section 154.027, Civil Practice and Remedies Code.

[~~(b) The division of responsibilities under the memorandum of understanding must be consistent with federal law relating to the state medical assistance program.~~]

SECTION 2.14. (a) Subchapter D, Chapter 33, Education Code, is amended by adding Section 33.086 to read as follows:

Sec. 33.086. CERTIFICATION IN CARDIOPULMONARY RESUSCITATION AND FIRST AID. (a) A school district employee who serves as the head coach or chief sponsor for an extracurricular athletic activity, including cheerleading, sponsored or sanctioned by a school district or the University Interscholastic League must maintain and submit to the district proof of current certification in first aid and cardiopulmonary resuscitation issued by the American Red Cross, the American Heart Association, or another organization that provides equivalent training and certification.

(b) Each school district shall adopt procedures necessary for administering this section, including procedures for the time and manner in which proof of current certification must be submitted.

(b) Section 33.086, Education Code, as added by Subsection (a) of this section, applies beginning January 1, 2000.

SECTION 2.15. Section 37.006, Education Code, is amended by amending Subsection (f) and adding Subsection (l) to read as follows:

(f) Subject to Section 37.007(e), a student who is younger than 10 years of age shall be removed from class and placed in an alternative education program under Section 37.008 if the student engages in conduct described by Section 37.007. An elementary school student may not be placed in an alternative education program with any other student who is not an elementary school student.

(l) Notwithstanding any other provision of this code, a student who is younger than six years of age may not be removed from class and placed in an alternative education program.

SECTION 2.16. Subsection (m), Section 37.008, Education Code, is amended to read as follows:

(m) The commissioner shall adopt rules necessary to evaluate annually the performance of each district's alternative education program established under this subchapter. The evaluation required by this section shall be based on indicators defined by the commissioner, but must include student performance on assessment instruments required under Sections 39.023(a) and (c) [~~administer the provisions of Chapter 39 for alternative education programs~~]. Academically, the mission of alternative education programs shall be to enable students to perform at grade level. [~~Annually, the commissioner shall define for alternative education programs acceptable performance and performance indicating a need for peer review, based principally on standards defined by the commissioner that measure academic progress of students toward grade level while attending an alternative education program.~~]

SECTION 2.17. Subsection (h), Section 37.011, Education Code, is amended to read as follows:

(h) Academically, the mission of juvenile justice alternative education programs shall be to enable students to perform at grade level. For purposes of accountability under Chapter 39, a student enrolled in a juvenile justice alternative education program is reported as if the student were enrolled at the student's assigned campus in the student's regularly assigned education program, including a special education program. Annually the Texas Juvenile Probation Commission, with the agreement of the commissioner, shall develop and implement a system of accountability consistent

with Chapter 39, where appropriate, to assure that students make progress toward grade level while attending a juvenile justice alternative education program. The Texas Juvenile Probation Commission shall adopt rules for the distribution of funds appropriated under this section to juvenile boards in counties required to establish juvenile justice alternative education programs. Except as determined by the commissioner, a [~~A~~] student served by a juvenile justice alternative education program on the basis of an expulsion under Section 37.007(a), (d), or (e) is not eligible for Foundation School Program funding under Chapter 42 or 31 if the juvenile justice alternative education program receives funding from the Texas Juvenile Probation Commission under this subchapter.

SECTION 2.18. Subchapter B, Chapter 39, Education Code, is amended by adding Section 39.0231 to read as follows:

Sec. 39.0231. REPORTING OF RESULTS OF CERTAIN ASSESSMENTS. The agency shall ensure that each assessment instrument administered in accordance with Section 28.0211 is scored and that the results are returned to the appropriate school district not later than 10 days after receipt of the test materials by the agency or its test contractor.

SECTION 2.19. Subsection (b), Section 39.024, Education Code, is amended to read as follows:

(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) shall be designed to enable the students to be performing at grade level at the conclusion of the next regular school term and, if applicable, to carry out the purposes of Section 28.0211. 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 and, if applicable, to carry out the purposes of Section 28.0211.

SECTION 2.20. 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) the number of students, aggregated by grade level, provided accelerated instruction under Section 28.0211(c), the results of assessments administered under that section, the number of students promoted through the grade placement committee process under Section 28.0211, the subject of the assessment instrument on which each student failed to perform satisfactorily, and the performance of those students in the school year following that promotion on the assessment instruments required under Section 39.023;

(8) the percentage of students taking end-of-course assessment instruments adopted under Section 39.023(d);

(9) [~~(8)~~] the percentage of students exempted, by exemption category, from the assessment program generally applicable under this subchapter; and

(10) [~~(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 (6) and shall project the standards for each of those levels of performance for succeeding years. For the indicator under Subsection (b)(7), the commissioner shall define exemplary, recognized, and unacceptable performance based on student performance for the period covering both the current and preceding academic years.

SECTION 2.21. Subsection (b), Section 39.052, Education Code, is amended to read as follows:

(b) The report card shall include the following information where applicable:

(1) the academic excellence indicators adopted under Sections 39.051(b)(1) through (9) [~~(8)~~];

(2) student/teacher ratios; and

(3) administrative and instructional costs per student.

SECTION 2.22. 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 2.23. Subsection (a), Section 39.073, Education Code, is 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.

SECTION 2.24. 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 2.25. Subsection (c), Section 39.075, Education Code, is amended to read as follows:

(c) Based on the results of a special accreditation investigation, the commissioner may:

(1) take appropriate action under Subchapter G;

(2) lower the district's accreditation rating; or

(3) take action under both Subdivisions (1) and (2) [~~and may take appropriate action under Subchapter G~~].

SECTION 2.26. Section 39.183, Education Code, is amended to read as follows:

Sec. 39.183. REGIONAL AND DISTRICT LEVEL REPORT. The agency shall prepare and deliver to the governor, the lieutenant governor, the speaker of the house of representatives, each member of the legislature, the Legislative Budget Board, and the clerks of the standing committees of the senate and house of representatives with primary jurisdiction over the public school system a regional and district level report covering the preceding two school years and containing:

(1) a summary of school district compliance with the student/teacher ratios and class-size limitations prescribed by Sections 25.111 and 25.112, including the number of districts granted an exception from Section 25.112;

(2) a summary of the exemptions and waivers granted to school districts under Section 7.056 or 39.112 and a review of the effectiveness of each campus or district following deregulation; [~~and~~]

(3) an evaluation of the performance of the system of regional education service centers based on the indicators adopted under Section 8.101 and client satisfaction with services provided under Subchapter B, Chapter 8; and

(4) an evaluation of accelerated instruction programs offered under Section 28.006, including an assessment of the quality of such programs and the performance of students enrolled in such programs.

ARTICLE 3. REPEALER; EFFECTIVE DATE; EMERGENCY

SECTION 3.01. (a) Subsection (b), Section 8.121, Subsection (c), Section 41.002, Subsection (c), Section 42.251, and Subsection (e), Section 42.252, Education Code, are repealed.

(b) Effective August 31, 1999, Subsection (i), Section 403.302, Government Code, is repealed.

(c) Subsection (f), Section 26.08, Tax Code, is repealed.

SECTION 3.02. Except as otherwise provided by this Act, this Act takes effect September 1, 1999.

SECTION 3.03. 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.

## MEMORIAL RESOLUTIONS

**SR 1176** - by Shapleigh: In memory of Edna Louise Taylor Miller of El Paso.

**SR 1177** - by Shapleigh: In memory of Francisco Salas Porras of El Paso.

**SR 1185** - by Zaffirini: In memory of Jose "Chito" Vela, Jr., of Laredo.

**HCR 37** - (Ratliff): In memory of Norman Nagle Moser.

## CONGRATULATORY RESOLUTIONS

**SR 1179** - by Armbrister: Congratulating Colleen Wooten Jenkins of Austin.

**SR 1182** - by Lucio: Congratulating Dr. Lorenzo R. Pelly of Brownsville.

**HCR 159** - (Ratliff): Commending the Atlanta Independent School District on the occasion of its 125th anniversary.

## MISCELLANEOUS RESOLUTION

**HCR 257** - (Ratliff): Recognizing May 4, 1999, as Texarkana Day at the State Capitol.

## ADJOURNMENT

Pursuant to a previously adopted motion, the Senate at 12:00 midnight adjourned, in memory of Roy P. Benavidez of El Campo and the Honorable William T. Moore of Bryan, until 2:00 p.m. today.

# APPENDIX

## SENT TO GOVERNOR

May 29, 1999

**SB 24, SB 56, SB 71, SB 74, SB 77, SB 81, SB 92, SB 100, SB 105, SB 132, SB 154, SB 191, SB 210, SB 214, SB 229, SB 272, SB 313, SB 321, SB 329, SB 335, SB 337, SB 340, SB 382, SB 396, SB 399, SB 408, SB 416, SB 420, SB 421, SB 432, SB 476, SB 481, SB 484, SB 530, SB 570, SB 571, SB 611, SB 657, SB 658, SB 686, SB 688, SB 762, SB 781, SB 788, SB 801, SB 867, SB 870, SB 901, SB 917, SB 930, SB 993, SB 997, SB 1001, SB 1007, SB 1013, SB 1073, SB 1084, SB 1089, SB 1091, SB 1097, SB 1099, SB 1175, SB 1180, SB 1184, SB 1294, SB 1301, SB 1304, SB 1354, SB 1363, SB 1428, SB 1429, SB 1434, SB 1447, SB 1472, SB 1511, SB 1613, SB 1676, SB 1819, SB 1832, SB 1833, SB 1846, SB 1884, SB 1901, SCR 12, SCR 14, SCR 21, SCR 52, SCR 72, SCR 75**

**In Memory**

**of**

**Roy P. Benavidez**

Senator Armbrister offered the following resolution:

**(Senate Resolution 707)**

WHEREAS, The Senate of the State of Texas joins the citizens of El Campo in mourning the loss of Master Sergeant Roy P. Benavidez, who died November 29, 1998, at the age of 63; and

WHEREAS, Born August 5, 1935, in DeWitt County, Roy Benavidez was the son of sharecroppers who died when he was six years old; Roy was raised by his grandparents and attended school until dropping out at the age of 14; and

WHEREAS, Roy joined the United States Army in 1955, and his dedication and superior performance in the military earned him a position with the elite Special Forces unit, the Green Berets; in December of 1965, while on his first tour of duty in Vietnam, Sergeant Benavidez was injured by a land mine and was not expected to walk again; and

WHEREAS, A tenacious fighter, Sergeant Benavidez made a remarkable recovery from his injuries and later returned to Vietnam; at the age of 33, while working inside the South Vietnamese border, he learned that 12 wounded members of a Special Forces reconnaissance team were surrounded by North Vietnamese soldiers; and

WHEREAS, Sergeant Benavidez courageously initiated a mission to rescue the men, and upon reaching their location on May 2, 1968, he plunged into battle, engaging in hand-to-hand combat; Sergeant Benavidez sustained 37 wounds, but acting as a medic, sharpshoooter, and commander, he saved the lives of eight Green Berets; for his exceptional valor, he was awarded the Distinguished Service Cross and was given the Congressional Medal of Honor by President Reagan in 1981; and

WHEREAS, Roy Benavidez retired from the military in 1976 and continued to serve his country by devoting his time and energy to veterans groups and by visiting schools to speak to young people on such issues as education, drug use, and gangs; he was honored on numerous occasions, and several Texas schools, a National Guard Armory, and an Army Reserve center have been given his name as a tribute to his patriotism and devotion to duty; and

WHEREAS, A man of uncommon courage, strength, and compassion, Roy Benavidez gave unselfishly of his life to others, and his amazing accomplishments will not be forgotten; and

WHEREAS, A distinguished soldier and gentleman, Sergeant Benavidez will long be remembered by Americans across the country for his heroism and his exemplary commitment to the welfare of his fellowman; and

WHEREAS, Roy Benavidez was also a devoted husband, father, and grandfather, and he leaves behind memories that will be treasured forever by his family and many friends; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 76th Legislature, hereby extend sincere condolences to the bereaved family of Roy P. Benavidez: his wife, Hilaria Benavidez; his son, Noel Benavidez; his daughters, Yvette Benavidez Garcia and Denise Benavidez Prochazka; his brother, Roger Benavidez; his sisters, Mary Martinez, Lupe Chavez, Helene Vallejo, and Eva Campos; his stepbrothers, Mike, Eugene, Frank, Nick, and Juquin Benavidez; and his grandchildren; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the members of his 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 Roy Benavidez.

ARMBRISTER
TRUAN

The resolution was again read.

On motion of Senator Truan and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

The resolution was previously adopted on Wednesday, April 21, 1999.

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

**Senator Armbrister:** Thank you, Mr. President. Members, we had asked for a full reading of the resolution, not only in honor of a true American, true Texas hero, but those of us that lived through our generation and a lot of times only heard about uncommon courage, very seldom witnessed it. Roy Benavidez, for those that knew him well, know that if he were here today he would probably have his head down, wondering who they were talking about. He was not a man that sought attention. He was kind to every person that he met. He always had a word of encouragement, especially for those that were maybe having some problems, either with school, or determining whether to stay in school or drop out, or maybe they had gotten to a point where they thought they couldn't go any further. Roy was one of those that then went into action, as he did when he served our country in the military. He was a man of uncommon courage and valor, honesty, integrity, and dedication. You know, we often hear so many times and we recognize a lot of honorable people up here, but when you think about Roy Benavidez, he is truly a man for all ages of Texas. He would have been on the walls of the Alamo fighting for his state. He would have been on San Juan Hill. He would have been in World War I, II, Korea, Vietnam, Desert Storm, Kosovo, because he was a man of action. He was a man of dedication to what is right about Texas and what

is right about America. He understood the values, as was mentioned. He left school at the age of 14 and then joined the military; only to come back and serve young people throughout, not only my Senate district, but throughout the state, talking the values of staying in school, not leaving; there's a better way out and that's through education.

We're honored today to have part of the Benavidez family and friends. We have his son, Noel, and his wife, Andrea. We have a very close friend of Roy's, Benito Sauceda, and his wife, Gloria, and daughter, JoAnna; and another very close personal friend, Jose Garcia. Roy's wife, Hilaria, could not be with us due to her own personal illness. Also Roy's daughter, Denise, is fixing to grant them the joy that he always liked, and that's another grandchild. Yvette lives out of state and was unable to attend. Members, if you would, help me recognize the family and the memory of Roy Benavidez.

**Senator Truan:** Thank you Senator Armbrister. Two years ago when we were sworn into office and started our session, Roy Benavidez was with us here and, Senator, you introduced him and recognized him. I was most happy to have had the opportunity to have met a real American hero, someone that served our country in time of war and in time of peace. I talked to him about his message to the young people as he traveled across this country and to other groups. He told me that he always wanted people to remember what has made this country great. I was in New York City with my wife at a company convention and a featured speaker there, in the presence of thousands of delegates, was Master Sergeant Roy Benavidez. I was most pleased to see him and to know that he was taking the time to tell America what it is like to defend our country. We talk about a gentleman who started out from humble beginnings, managed to survive the hardships of life, served in the United States Army beginning in 1955 (and he joined, he didn't wait to be drafted), and he retired 21 years later in 1976. It is remarkable how, in his first tour in Vietnam, he was very severely wounded by a land mine and was not expected to walk again. He made a remarkable recovery and returned to Vietnam and then found while inside South Vietnamese lines his comrades, Green Berets, were surrounded. He went in to save them. He risked his very life, and for that he was recognized and given the Congressional Medal of Honor. I join with you, Senator Armbrister, in recognizing the memory of an outstanding American who served us gallantly, valiantly, and one who we honor his memory here today.

**Senator Gallegos:** Thank you, Mr. President. I just want to rise and also echo the sentiments of my colleagues. Roy and my father were real close friends, and now there's two schools named after my father and Roy in my district. Roy, when I first got elected to the Senate, had asked me to come speak at a fundraiser in El Campo; and I did ask permission from Senator Armbrister to come into his city. But just what has been said

about this man is really more; there is more about this man that can be said in any words or in any document. This was a very loving man and truly a hero, like Senator Armbrister so eloquently put it. He was more than that. He will forever be remembered, not only as a Texan but especially in our community, in the Hispanic community. To the family, I just want to tell you thank you. Roy, I don't mind telling you, will always be remembered as not only our hero, but as our friend.

**Senator Lucio:** Thank you Mr. President. I would be remiss if I didn't join Senator Armbrister and Senator Truan and others who have very eloquently addressed this resolution here this morning. Roy Benavidez had many friends in the Rio Grande Valley. He went to the Valley, Senator Armbrister, on many occasions. He was a great leader. I think you said it, the definition of a leader is not a position it's action, and he took action. He was very involved, participated so much in whatever process was necessary to make Texas better and America greater. I'm just very pleased to have an opportunity to join with you on this occasion to let everyone know how the people of the Valley, especially in my district, felt about this great individual. He, on many occasions where I was traveling, was able to speak and address a group, and I always listened attentively because he spoke about Americanism. He spoke about the greatness of this country. He spoke about what was right. He was always positive and for that I will remember him. He had that all-American look, and his son reminds me of that this morning. I think that we can learn from the life of Roy Benavidez. I'm glad that we got to know him. I'm glad that we're able to participate where he was, in our great state, and take note of his greatness. Thank you Mr. President.

**Senator Zaffirini:** Thank you Mr. President. I first met Roy Benavidez through a great friend of many of the Members of the Senate, the late Frank Tejeda who served in the Senate so ably. Senator Tejeda introduced him to many people throughout Texas and talked about heroism. As I learned more about Roy Benavidez, I too was impressed with his heroism, but there is something about him that is often overlooked and should not be. That is that two years after he received the Medal of Honor he was back in Washington, back in Washington fighting a different type of war, a war to secure greater benefits for all veterans. It is because of his work in Washington, D.C., that disability reviews are now more humane and more compassionate. What I remember most about him was how kind he was, how friendly, how down-to-earth, and that when his heroism was described as extraordinary, he said simply, "No, that's just duty." What a man. Thank you Mr. President, Members.

**Senator Ellis:** Mr. President, I too rise to lend my voice of support for the life of Roy Benavidez. On many occasions Senator Gallegos and other Hispanic leaders in Houston would have him there. What they didn't

know was that from time to time he'd stay in a building that I lived in, The Spires, because a friend of his owned a condo there. One of my most vivid memories of him was that he didn't sleep at night after speaking to young kids throughout Houston at high schools during the day. I think he must have been an insomniac, because for me, someone who did not serve in a war, I'd hear a lot about war stories in the late hours of the night. He gave me an opportunity to get to know him close up and personal, personally. I'm just very honored to say that he was a very great man and made many contributions to Texas.

Senator Armbrister was recognized and introduced to the Senate the family and friends of Roy P. Benavidez: his son, Noel Benavidez, and his wife, Andrea, of El Campo; his nephew, Demetrio Duarte, and his wife, Sally, of San Antonio; and his close personal friends: Thomas Gloria and his wife, Polly; Benito Saucedo and his wife, Gloria, and his daughter, JoAnna, of San Antonio; and Jose Garcia of Taft.

The Senate welcomed its guests and extended its condolences.

**In Memory**

**of**

**William T. Moore**

Senator Ogden offered the following resolution:

**(Senate Concurrent Resolution 88)**

WHEREAS, The passing of the Honorable William T. "Bill" Moore on May 27, 1999, at the age of 81, has brought a tremendous loss to his family and friends and to the citizens of this great state, and it is with the utmost respect that the members of the 76th Texas Legislature remember this esteemed gentleman and extol his many accomplishments; and

WHEREAS, Born in Wheelock on April 9, 1918, Senator Moore attended Texas A&M University, graduating in 1940 with a bachelor's degree in economics; he taught at the university for several years before joining the U.S. Army Air Corps in 1943 and serving his country in the Atlantic and Pacific theaters during World War II; and

WHEREAS, After retiring from the armed forces as a sergeant in 1946, he ran for the Texas House of Representatives and won a seat in the legislature while attending The University of Texas School of Law; by the time of his graduation in 1949, he had already completed a term in the house and was in his first year of service as a state senator, a post he would hold for three decades; and

WHEREAS, A longtime resident of Bryan, Senator Moore enjoyed a productive and memorable tenure as a member of the Texas Senate, serving in that legislative body from the 51st to the 66th legislative session and demonstrating exemplary leadership as president pro tempore of the senate, longtime chairman of the State Affairs Committee, and as a leader on a number of prestigious committees; his persistence and tenacity during his years at the Capitol earned him the moniker "Bull of the Brazos," a nickname that stayed with him throughout and beyond his years in the legislature; and

WHEREAS, Despite attending law school in Austin, Senator Moore was an Aggie through and through, and his role in fostering the growth of The Texas A&M University System cannot be overstated; he actively promoted the school's admission of women, and despite the numerous obstacles that were placed in his path, he succeeded in changing the university to a coeducational institution, a move that has since been lauded as a watershed act; and

WHEREAS, A staunch advocate of education, Senator Moore received many awards for his work in behalf of the young people of Texas, including the Texas A&M University Distinguished Alumni Award; in 1995, Bryan's Allen Academy dedicated the William T. Moore Upper School Building, and that same institution established the Moore Excellence Fund in honor of the senator's lifelong commitment to education, particularly his backing of state-supported institutions of higher education; and

WHEREAS, After his retirement from the legislature, Senator Moore returned to his home in Bryan to practice law and devote more time to his growing family; he proved to be as adept at business as he was at politics, furthering his already well-established reputation for success in the arenas of banking and real estate, while continuing to dedicate much time and energy to several local civic organizations and to helping his fellow citizens; and

WHEREAS, Bill Moore has undoubtedly left his mark in the annals of Lone Star history through his progressive and positive contributions to Texas and his larger-than-life personality; his legacy of achievement will remain for years to come, while those who knew him best will always remember his wonderful sense of humor and his caring nature; now, therefore, be it

RESOLVED, That the 76th Legislature of the State of Texas hereby pay tribute to the life of William T. "Bill" Moore and extend sincere sympathy to the members of his family: to his wife, Macille Moore; to his son and daughter-in-law, W. Tyler Moore and Mary Moore; to his beloved grandchildren; and to the many other relatives, friends, and colleagues of this remarkable public servant; and, be it further

RESOLVED, That an official copy of this resolution be prepared for the members of his family and that when the Texas House of Representatives and Senate adjourn this day, they do so in memory of Senator William T. "Bill" Moore.

The resolution was read.

On motion of Senator Truan 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 considered immediately and was adopted by a rising vote of the Senate.