

# SEVENTY-SECOND DAY

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MONDAY, MAY 14, 2001

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## 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, Ogden, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini, Mr. President.

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

Father Thomas Foley, Saint Austin's Catholic Church, Austin, offered the invocation as follows:

Lord, I believe in You; increase my faith. I trust in You; strengthen my trust. I love You; let me love You more and more. I want to do what You ask of me, in the way You ask, for as long as You ask, because You ask it. Let me love You, my Lord and my God, and see myself as I really am: a pilgrim in this world, a person called to respect and love all whose lives I touch. Let my conscience be clear, my conduct without fault, my speech blameless, and my life well-ordered. Put me on guard against my human weaknesses, let me cherish Your love for me. Teach me to realize that this world is passing, that my true future is the happiness of heaven, that life on Earth is short, and the life to come eternal. Help me to prepare for death with a proper fear of judgment, but a greater trust in Your love and in Your goodness. And, when my time comes, lead me safely through the gates of death to be with you forever in heaven. Grant this, good and gracious God, if it pleases You. Amen.

On motion of Senator Truan and by unanimous consent, the reading of the Journal of the proceedings of Friday, May 11, 2001, was dispensed with and the Journal was approved.

## **CO-AUTHOR OF SENATE BILL 488**

On motion of Senator Harris and by unanimous consent, Senator Staples will be shown as Co-author of **SB 488**.

**MESSAGE FROM THE GOVERNOR**

The following Message from the Governor was read and was referred to the Committee on Nominations:

Austin, Texas  
May 14, 2001

TO THE SENATE OF THE SEVENTY-SEVENTH LEGISLATURE, REGULAR SESSION:

I ask the advice, consent and confirmation of the Senate with respect to the following appointments:

TO BE MEMBERS OF THE TEXAS BOARD OF PARDONS AND PAROLES for terms to expire as indicated below:

TO EXPIRE FEBRUARY 1, 2003:

James E. Bush  
P.O. Box 7291  
Huntsville, Texas 77342-7291

(Mr. Bush will be replacing Sandie Walker of Bryan who resigned effective May 31, 2001)

TO EXPIRE FEBRUARY 1, 2007:

Gerald Garrett  
2424 Emmett Parkway  
Austin, Texas 78728

(Mr. Garrett is being reappointed)

Roy Anthony Garcia  
Route 1, Box 632  
Tennessee Colony, Texas 75861

(Mr. Garcia will be replacing James E. Bush of Huntsville whose term expired)

Billy Wayne Linson  
P.O. Box 1885  
Cedar Hill, Texas 75106

(Mr. Linson will be replacing Cynthia Tauss of Angleton whose term expired)

Respectfully submitted,

/s/Rick Perry  
Governor

**PHYSICIAN OF THE DAY**

Senator Van de Putte was recognized and presented Dr. Joshua Freeman of San Antonio as the Physician of the Day.

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

**SENATE RESOLUTION 996**

Senator Lucio offered the following resolution:

WHEREAS, The Senate of the State of Texas takes great pride in recognizing William H. "Bill" Cunningham for his eight years of invaluable service as chancellor of The University of Texas System; and

WHEREAS, He joined The University of Texas at Austin as a professor of marketing and served as dean of the College of Business Administration/Graduate School of Business from 1983 to 1985 before becoming the university's president; and

WHEREAS, After serving as president for seven years, Dr. Cunningham assumed the duties of chancellor of the system in 1992; as chancellor, he held the Lee Hage and Joseph D. Jamail Regents Chair in Higher Education Leadership and was the chief executive officer for nine academic institutions, four medical schools, and two hospitals; and

WHEREAS, During his tenure, Dr. Cunningham skillfully managed a complex system with a \$5.4 billion annual operating budget, \$20 billion in total assets, and over 76,280 employees; and

WHEREAS, Dedicated to the welfare of The University of Texas System and its campuses, Dr. Cunningham was responsible for the founding and maintenance of innumerable administrative and educational programs and policies; one of his most notable initiatives was his cost-cutting plan to save the university an estimated \$505 million during the period of 1999 to 2002; and

WHEREAS, Dr. Cunningham devoted much of his time and energy to improving the educational opportunities in South Texas; he strongly supported the expansion of the Texas/Border Initiative, which resulted in funds of \$440 million for five University of Texas System institutions in South Texas and the border region; and

WHEREAS, Other ventures in the border area under Dr. Cunningham's leadership included the creation of a Regional Academic Health Center in the Lower Rio Grande Valley and an agreement between The University of Texas at El Paso and Texas Tech University to operate a research center devoted to border health issues; and

WHEREAS, In order to make The University of Texas System available to more students, the UT TeleCampus was created, and methods to increase minority enrollment were addressed; in addition, Dr. Cunningham supported an initiative to increase the number of minorities and women in the system's faculty and administrative positions; and

WHEREAS, A strong proponent of the argument that an investment in higher education has a positive effect on the economic well-being of our state, Dr. Cunningham worked hard to secure \$1.2 billion in new funds for higher education in Texas during 1999; and

WHEREAS, A prominent Texas citizen and a nationally recognized leader in the field of education, Dr. Cunningham was named an Outstanding Texas Leader by the John Ben Shepperd Leadership Forum in 1987 and has been listed in *Who's Who in the World* since 1989; he earned the Distinguished Alumnus Award and an Honorary Doctor of Laws degree from Michigan State University in 1993; and

WHEREAS, Throughout his 21 years of service to The University of Texas System, Dr. Cunningham had a positive influence on the lives of countless students, professors, and staff members, and he earned a reputation as a superior administrator; and

WHEREAS, As chancellor of The University of Texas System, Dr. Cunningham played a major role in making the system's universities the high-quality institutions they are today, and he deserves legislative recognition for his exceptional achievements; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 77th Legislature, hereby express appreciation to Dr. William H. Cunningham for his outstanding

accomplishments and leadership and his invaluable contributions to The University of Texas System and extend best wishes to him for the future; and, be it further

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

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 Lucio, the resolution was adopted by a viva voce vote.

### **GUESTS PRESENTED**

Senator Lucio was recognized and introduced to the Senate William H. "Bill" Cunningham and his family.

The Senate welcomed its guests.

### **SENATE RESOLUTION 1047**

Senator Barrientos offered the following resolution:

WHEREAS, The Senate of the State of Texas takes great pleasure in recognizing Emma J. Long of Austin for her extensive contributions to her community, and her state, and for her pioneering activities as the first woman elected to the Austin City Council in 1948; and

WHEREAS, Born February 29, 1912, she graduated from The University of Texas at Austin in 1936 with a degree in history; she married the late Stuart Long on July 31, 1936; and

WHEREAS, Stuart and Emma were blessed with two sons, Jeb Jackson Long, born on February 4, 1941, and Jefferson P. Long, born on July 7, 1948; and

WHEREAS, In October of 1948, Emma ran for the Austin City Council and was elected in a special election, becoming the first woman elected to a city council in any major Texas city; in 1949, Mrs. Long was re-elected in a regular election, and she continued to serve her city superbly through 1959; and

WHEREAS, By popular demand, Emma Long ran for city council again in 1963 and won, and in 1967 she became the Mayor Pro Tempore; she ran for the council in 1969, but her advocacy for the fair housing ordinance the council had passed worked against her, and she was defeated by 300 votes; and

WHEREAS, While in public office, Mrs. Long accomplished a great deal for the parks department and was a forceful proponent of getting a strong Parks and Recreation Board appointed; the board promoted restructuring and upgrading of its programs and the entire Austin and Travis County area benefitted; in recognition of her efforts on behalf of city parks, the Emma Long Metropolitan Park was named in her honor; and

WHEREAS, Since 1969, she has assisted the Democratic Party, and she has been a delegate to county, state, and national Democratic Party conventions; and

WHEREAS, Stuart Long passed away in 1977, and Emma took on his elected position as precinct chair for Precinct 131; on May 12, 1984, Mrs. Long was honored at the Travis County Democratic Convention when she was selected as Permanent Secretary by a unanimous vote; and

WHEREAS, On a first-name basis with two presidents, several governors, state senators, and state representatives, she was the recipient of numerous awards and honors; Emma Long has been an excellent role model for all young people; a fascination with politics and community service was a way of life for her, and she has

been a selfless and active public servant; she has kept her integrity throughout her eventful life, and she is certainly worthy of legislative recognition, now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 77th Legislature, hereby commend Emma Long for her long record of public service contributions and achievements; and, be it further

RESOLVED, That a copy of this Resolution be prepared for her as an expression of great appreciation from the Texas Senate.

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 Barrientos, the resolution was adopted by a viva voce vote.

### **GUESTS PRESENTED**

Senator Barrientos was recognized and introduced to the Senate Emma J. Long, accompanied by her sons, Jeb Jackson Long and Jefferson P. Long, and two nieces.

The Senate welcomed its guests.

### **CONCLUSION OF MORNING CALL**

The President at 10:28 a.m. announced the conclusion of morning call.

### **GUESTS PRESENTED**

Senator Wentworth was recognized and introduced to the Senate fourth- and fifth-grade student council members from Walzem Elementary School in San Antonio, accompanied by their sponsors.

The Senate welcomed its guests.

### **SENATE BILL 424 WITH HOUSE AMENDMENT**

Senator Shapleigh called **SB 424** from the President's table for consideration of the House amendment to the bill.

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

#### **Amendment**

Amend **SB 424** by substituting in lieu thereof the following:

#### **A BILL TO BE ENTITLED AN ACT**

relating to a state strategic health plan.

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

SECTION 1. (a) The Texas Department of Health, with assistance from the Health and Human Services Commission, the Texas Natural Resource Conservation Commission, and The University of Texas School of Public Health at Houston, shall study the health of the residents of this state and develop a strategic health plan for this state.

(b) In developing the strategic health plan, the Texas Department of Health must examine:

(1) the potential impact of the following on the health of the residents of this state:

(A) any increased industrial pollution along the region of the state near the border with Mexico;

(B) any decrease in the air quality in this state resulting from the increased commerce between this state and Mexico;

(C) any increased transmission of communicable diseases and any potentially unsafe health practices resulting from the increased exchange of goods, services, and people; and

(D) the health problems associated with environmental contamination in communities containing or in close proximity to state and federal industrial clean-up sites;

(2) the following as related to the increase in trade between Mexico and this state:

(A) the potential behavioral effects on residents of this state;

(B) potential environmental changes; and

(C) potential changes in economic and population growth;

(3) health care delivery and the access residents of this state have to health care; and

(4) the organizational infrastructure of the health care system.

(c) The strategic health plan must outline the steps the state should take to address the health needs of the residents of this state.

(d) The Texas Department of Health shall, not later than December 15, 2002, develop the strategic health plan required by this Act and file a written report of the plan with the governor, the lieutenant governor, and the speaker of the house of representatives. The department may combine the plan or the report required by this Act with any other plan or report the department is required to develop or file under other law.

SECTION 2. This Act expires February 1, 2003.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2001.

The amendment was read.

Senator Shapleigh moved to concur in the House amendment to **SB 424**.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

### **SENATE BILL 38 WITH HOUSE AMENDMENT**

Senator Zaffirini called **SB 38** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 38** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to authorizing the conduct of architectural review before the construction or remodeling of certain long-term and other care facilities.

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

SECTION 1. Chapter 103, Human Resources Code, is amended by adding Section 103.0075 to read as follows:

Sec. 103.0075. EARLY COMPLIANCE REVIEW. (a) The department by rule shall adopt a procedure under which a person proposing to construct or modify an adult day-care facility may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the department shall set reasonable deadlines by which the department must complete review of submitted plans.

(b) The department shall, within 30 days, review plans submitted under this section for compliance with the department's architectural requirements and inform the person in writing of the results of the review. If the plans comply with the department's architectural requirements, the department may not subsequently change the architectural requirements applicable to the project unless:

(1) the change is required by federal law; or

(2) the person fails to complete the project within a reasonable time.

(c) The department may charge a reasonable fee for conducting a review under this section.

(d) A fee collected under this section shall be deposited in the general revenue fund and may be appropriated only to the department to conduct reviews under this section.

(e) The review procedure provided by this section does not include review of building plans for compliance with the Texas Accessibility Standards as administered and enforced by the Texas Department of Licensing and Regulation.

SECTION 2. Subchapter B, Chapter 242, Health and Safety Code, is amended by adding Section 242.0385 to read as follows:

Sec. 242.0385. EARLY COMPLIANCE REVIEW. (a) The department by rule shall adopt a procedure under which a person proposing to construct or modify an institution may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the department shall set reasonable deadlines by which the department must complete review of submitted plans.

(b) The department shall, within 30 days, review plans submitted under this section for compliance with the department's architectural requirements and inform the person in writing of the results of the review. If the plans comply with the department's architectural requirements, the department may not subsequently change the architectural requirements applicable to the project unless:

(1) the change is required by federal law; or

(2) the person fails to complete the project within a reasonable time.

(c) The department may charge a reasonable fee for conducting a review under this section.

(d) A fee collected under this section shall be deposited in the general revenue fund and may be appropriated only to the department to conduct reviews under this section.

(e) The review procedure provided by this section does not include review of building plans for compliance with the Texas Accessibility Standards as administered and enforced.

SECTION 3. Subchapter B, Chapter 252, Health and Safety Code, is amended by adding Section 252.0375 to read as follows:

Sec. 252.0375. EARLY COMPLIANCE REVIEW. (a) The department by rule shall adopt a procedure under which a person proposing to construct or modify a facility may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the department shall set reasonable deadlines by which the department must complete review of submitted plans.

(b) The department shall, within 30 days, review plans submitted under this section for compliance with the department's architectural requirements and inform the person in writing of the results of the review. If the plans comply with the department's architectural requirements, the department may not subsequently change the architectural requirements applicable to the project unless:

(1) the change is required by federal law; or

(2) the person fails to complete the project within a reasonable time.

(c) The department may charge a reasonable fee for conducting a review under this section.

(d) A fee collected under this section shall be deposited in the general revenue fund and may be appropriated only to the department to conduct reviews under this section.

(e) The review procedure provided by this section does not include review of building plans for compliance with the Texas Accessibility Standards as administered and enforced.

SECTION 4. This Act takes effect September 1, 2001.

The amendment was read.

On motion of Senator Zaffirini, the Senate concurred in the House amendment to **SB 38** by a viva voce vote.

### **SENATE BILL 834 WITH HOUSE AMENDMENT**

Senator Moncrief called **SB 834** from the President's table for consideration of the House amendment to the bill.

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

### **Amendment**

Amend **SB 834** by substituting in lieu thereof the following:

### **A BILL TO BE ENTITLED AN ACT**

relating to electronic access to health and human services information.



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

SECTION 1. Section 531.0313, Government Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) The Texas Information and Referral Network shall coordinate with the Department of Information Resources to maintain the Internet site through the TexasOnline project established by the Department of Information Resources.

(e) In this section, "Internet" means the largest nonproprietary, nonprofit cooperative public computer network, popularly known as the Internet.

SECTION 2. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0317 to read as follows:

Sec. 531.0317. HEALTH AND HUMAN SERVICES INFORMATION MADE AVAILABLE THROUGH THE INTERNET. (a) In this section, "Internet" means the largest nonproprietary, nonprofit cooperative public computer network, popularly known as the Internet.

(b) The commission, in cooperation with the Department of Information Resources, shall establish and maintain through the TexasOnline project established by the Department of Information Resources a generally accessible and interactive Internet site that contains information for the public regarding the services and programs provided or administered by each of the health and human services agencies throughout the state. The commission shall establish the site in such a manner that it can be located easily through electronic means.

(c) The Internet site must:

(1) contain information that is:

(A) in a concise and easily understandable and accessible format; and

(B) organized by the type of service provided rather than by the agency or provider delivering the service;

(2) contain eligibility criteria for each agency program;

(3) contain application forms for each of the public assistance programs administered by health and human services agencies, including application forms for:

(A) financial assistance under Chapter 31, Human Resources Code;

(B) medical assistance under Chapter 32, Human Resources Code; and

(C) nutritional assistance under Chapter 33, Human Resources Code;

(4) to avoid duplication of functions and efforts, provide a link that provides access to a site maintained by the Texas Information and Referral Network under Section 531.0313;

(5) contain the telephone number and, to the extent available, the electronic mail address for each health and human services agency and local provider of health and human services;

(6) be designed in a manner that allows a member of the public to send questions about each agency's programs or services electronically and receive responses to the questions from the agency electronically; and

(7) be updated at least quarterly.

(d) In designing the Internet site, the commission shall comply with any state standards for Internet sites that are prescribed by the Department of Information Resources or any other state agency.

(e) The commission shall ensure that:

(1) the Internet site does not contain any confidential information, including any confidential information regarding a client of a human services provider; and

(2) the Internet site's design and applications comply with generally acceptable standards for Internet accessibility for persons with disabilities and contain appropriate controls for information security.

(f) A health and human services agency, the Texas Information and Referral Network, and the Department of Information Resources shall cooperate with the commission to the extent necessary to enable the commission to perform its duties under this section.

SECTION 3. As soon as practicable after the effective date of this Act, the Health and Human Services Commission shall establish the health and human services information Internet site required by Section 531.0317, Government Code, as added by this Act.

SECTION 4. This Act takes effect September 1, 2001.

The amendment was read.

On motion of Senator Moncrief, the Senate concurred in the House amendment to **SB 834** by a viva voce vote.

### **SENATE BILL 141 WITH HOUSE AMENDMENT**

Senator Moncrief called **SB 141** from the President's table for consideration of the House amendment to the bill.

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

#### **Amendment**

Amend **SB 141** by substituting in lieu thereof the following:

#### **A BILL TO BE ENTITLED AN ACT**

relating to requiring disclaimers on certain advertisements that offer homestead designation services.

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

SECTION 1. Subchapter A, Chapter 41, Property Code, is amended by adding Section 41.0051 to read as follows:

Sec. 41.0051. DISCLAIMER REQUIRED. (a) A person may not deliver a written advertisement offering, for a fee, to designate property as a homestead as provided by Section 41.005 unless there is a disclaimer on the advertisement that is conspicuous and printed in 14-point boldface type or 14-point uppercase typewritten letters that makes the following statement or a substantially similar statement:

THIS DOCUMENT IS AN ADVERTISEMENT OF SERVICES.

IT IS NOT AN OFFICIAL DOCUMENT OF THE STATE OF TEXAS.

(b) A person's failure to provide a disclaimer on an advertisement as required by Subsection (a) is considered a false, misleading, or deceptive act or practice for purposes of Section 17.46(a), Business & Commerce Code, and is subject to action by the consumer protection division of the attorney general's office as provided by Section 17.46(a), Business & Commerce Code.

SECTION 2. This Act takes effect September 1, 2001.

The amendment was read.

On motion of Senator Moncrief, the Senate concurred in the House amendment to **SB 141** by a viva voce vote.

**SENATE BILL 243 WITH HOUSE AMENDMENTS**

Senator Harris called **SB 243** from the President's table for consideration of the House amendments to the bill.

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

**Amendment**

Amend **SB 243** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to financing capital improvements and facility expansions through the assessment of impact fees; providing a civil penalty.

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

SECTION 1. Sections 395.001(4), (8), (9), and (10), Local Government Code, are amended to read as follows:

(4) "Impact fee" means a charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump-sum charges, capital recovery fees, contributions in aid of construction, and any other fee that functions as described by this definition. The term does not include:

(A) dedication of land for public parks or payment in lieu of the dedication to serve park needs;

(B) dedication of rights-of-way or easements or construction or dedication of on-site or off-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks, or curbs if the dedication or construction is required by a valid ordinance and is necessitated by and attributable to the new development; ~~or~~

(C) lot or acreage fees to be placed in trust funds for the purpose of reimbursing developers for oversizing or constructing water or sewer mains or lines; or

(D) other pro rata fees for reimbursement of water or sewer mains or lines extended by the political subdivision.

However, an item included in the capital improvements plan may not be required to be constructed except in accordance with Section 395.019(2), and an owner may not be required to construct or dedicate facilities and to pay impact fees for those facilities.

(8) "Roadway facilities" means arterial or collector streets or roads that have been designated on an officially adopted roadway plan of the political subdivision, together with all necessary appurtenances. The term includes the political subdivision's share of costs for ~~does not include any~~ roadways and ~~or~~ associated improvements designated on the federal or Texas highway system, including local matching funds and costs related to utility line relocation and the establishment of curbs, gutters, sidewalks, drainage appurtenances, and rights-of-way.

(9) "Service area" means the area within the corporate boundaries or extraterritorial jurisdiction, as determined under Chapter 42, of the political subdivision to be served by the capital improvements or facilities expansions specified in the capital improvements plan, except roadway facilities and storm water, drainage, and flood control facilities. The service area, for the purposes of this chapter, may

include all or part of the land within the political subdivision or its extraterritorial jurisdiction, except for roadway facilities and storm water, drainage, and flood control facilities. For roadway facilities, the service area is limited to an area within the corporate boundaries of the political subdivision and shall not exceed six ~~a distance equal to the average trip length from the new development, but in no event more than three~~ miles~~[, which service area shall be served by the roadway facilities designated in the capital improvements plan]~~. For storm water, drainage, and flood control facilities, the service area may include all or part of the land within the political subdivision or its extraterritorial jurisdiction, but shall not exceed the area actually served by the storm water, drainage, and flood control facilities designated in the capital improvements plan and shall not extend across watershed boundaries.

(10) "Service unit" means a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards and based on historical data and trends applicable to the political subdivision in which the individual unit of development is located during the previous 10 years ~~[for a particular category of capital improvements or facility expansions]~~.

SECTION 2. Section 395.014(a), Local Government Code, is amended to read as follows:

(a) The political subdivision shall use qualified professionals to prepare the capital improvements plan and to calculate the impact fee. The capital improvements plan must contain specific enumeration of the following items:

(1) a description of the existing capital improvements within the service area and the costs to upgrade, update, improve, expand, or replace the improvements to meet existing needs and usage and stricter safety, efficiency, environmental, or regulatory standards, which shall be prepared by a qualified professional engineer licensed to perform the professional engineering services in this state;

(2) an analysis of the total capacity, the level of current usage, and commitments for usage of capacity of the existing capital improvements, which shall be prepared by a qualified professional engineer licensed to perform the professional engineering services in this state;

(3) a description of all or the parts of the capital improvements or facility expansions and their costs necessitated by and attributable to new development in the service area based on the approved land use assumptions, which shall be prepared by a qualified professional engineer licensed to perform the professional engineering services in this state;

(4) a definitive table establishing the specific level or quantity of use, consumption, generation, or discharge of a service unit for each category of capital improvements or facility expansions and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial, and industrial;

(5) the total number of projected service units necessitated by and attributable to new development within the service area based on the approved land use assumptions and calculated in accordance with generally accepted engineering or planning criteria; ~~and~~

(6) the projected demand for capital improvements or facility expansions required by new service units projected over a reasonable period of time, not to exceed 10 years; and

(7) a plan for awarding:

(A) a credit for the portion of ad valorem tax and utility service revenues generated by new service units during the program period that is used for the payment of improvements, including the payment of debt, that are included in the capital improvements plan; or

(B) in the alternative, a credit equal to 50 percent of the total projected cost of implementing the capital improvements plan.

SECTION 3. Section 395.015(a), Local Government Code, is amended to read as follows:

(a) The impact fee per service unit may not exceed the amount determined by subtracting the amount in Section 395.014(a)(7) from [dividing] the costs of the capital improvements described by Section 395.014(a)(3) and dividing that amount by the total number of projected service units described by Section 395.014(a)(5).

SECTION 4. Section 395.016(d), Local Government Code, is amended to read as follows:

(d) This subsection applies only to land platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision after adoption of an impact fee adopted after June 20, 1987. The political subdivision shall assess the impact fees before or at the time of recordation of a subdivision plat or other plat under Subchapter A, Chapter 212, or the subdivision or platting ordinance or procedures of any political subdivision in the official records of the county clerk of the county in which the tract is located. Except as provided by Section 395.019, if the political subdivision has water and wastewater capacity available:

(1) the political subdivision shall [may] collect the fees [at either the time of recordation of the subdivision plat or connection to the political subdivision's water or sewer system or] at the time the political subdivision issues a [either the] building permit; or

(2) for land platted outside the corporate boundaries of a municipality, the municipality shall collect the fees at the time an application for an individual meter connection to the municipality's water or wastewater system is filed [the certificate of occupancy].

SECTION 5. Subchapter C, Chapter 395, Local Government Code, is amended by adding Section 395.0411 and amending Sections 395.042-395.045, 395.047, and 395.049-395.051 to read as follows:

Sec. 395.0411. CAPITAL IMPROVEMENTS PLAN. The political subdivision shall provide for a capital improvements plan to be developed by qualified professionals using generally accepted engineering and planning practices in accordance with Section 395.014.

Sec. 395.042. HEARING ON LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN. To impose an impact fee, a political subdivision must adopt an order, ordinance, or resolution establishing a public hearing date to consider the land use assumptions and capital improvements plan for [within] the designated service area [that will be used to develop the capital improvements plan].

Sec. 395.043. INFORMATION ABOUT LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN AVAILABLE TO PUBLIC. On or before the date of the first publication of the notice of the hearing on the land use assumptions and capital improvements plan, the political subdivision shall make available to the public

its land use assumptions, the time period of the projections, and a description of ~~the general nature of~~ the capital improvement facilities that may be proposed.

Sec. 395.044. NOTICE OF HEARING ON LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN. (a) Before the 30th day before the date of the hearing on the land use assumptions and capital improvements plan, the political subdivision shall send a notice of the hearing by certified mail to any person who has given written notice by certified or registered mail to the municipal secretary or other designated official of the political subdivision requesting notice of the hearing within two years preceding the date of adoption of the order, ordinance, or resolution setting the public hearing.

(b) The political subdivision shall publish notice of the hearing ~~[once a week for three consecutive weeks, the first notice to appear]~~ before the 30th day ~~[but on or after the 60th day]~~ before the date set for the hearing, in one or more newspapers of general circulation in each county in which the political subdivision lies. However, a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may publish the required newspaper notice only in each county in which the service area lies. ~~[The notice of public hearing may not be in the part of the paper in which legal notices and classified ads appear and may not be smaller than one-quarter page of a standard-size or tabloid-size newspaper, and the headline on the notice must be in 18-point or larger type.]~~

(c) The notice must contain:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON LAND USE  
ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN RELATING  
TO POSSIBLE ADOPTION OF IMPACT FEES"

(2) the time, date, and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the land use assumptions and ~~[that will be used to develop a]~~ capital improvements plan under which an impact fee may be imposed; and

(4) ~~[an easily understandable map of the service area to which the land use assumptions apply; and~~

~~[(5)]~~ a statement that any member of the public has the right to appear at the hearing and present evidence for or against the land use assumptions and capital improvements plan.

Sec. 395.045. APPROVAL OF LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN REQUIRED. (a) After the public hearing on the land use assumptions and capital improvements plan, the political subdivision shall determine whether to adopt or reject an ordinance, order, or resolution approving the land use assumptions and capital improvements plan.

(b) The political subdivision, within 30 days after the date of the public hearing, shall approve or disapprove the land use assumptions and capital improvements plan.

(c) An ordinance, order, or resolution approving the land use assumptions and capital improvements plan may not be adopted as an emergency measure.

Sec. 395.047. HEARING ON [CAPITAL IMPROVEMENTS PLAN AND] IMPACT FEE. On adoption of the land use assumptions and ~~[completion of the]~~ capital improvements plan, the governing body shall adopt an order or resolution setting a public hearing to discuss the ~~[adoption of the plan and]~~ imposition of the

impact fee. The public hearing must be held by the governing body of the political subdivision to discuss the proposed ordinance, order, or resolution ~~[adopting a capital improvements plan and]~~ imposing an impact fee.

Sec. 395.049. NOTICE OF HEARING ON ~~[CAPITAL IMPROVEMENTS PLAN AND]~~ IMPACT FEE. (a) Before the 30th day before the date of the hearing on the imposition of an ~~[capital improvements plan and]~~ impact fee, the political subdivision shall send a notice of the hearing by certified mail to any person who has given written notice by certified or registered mail to the municipal secretary or other designated official of the political subdivision requesting notice of the hearing within two years preceding the date of adoption of the order or resolution setting the public hearing.

(b) The political subdivision shall publish notice of the hearing ~~[once a week for three consecutive weeks, the first notice to appear]~~ before the 30th day ~~[but on or after the 60th day]~~ before the date set for the hearing, in one or more newspapers of general circulation in each county in which the political subdivision lies. However, a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may publish the required newspaper notice only in each county in which the service area lies. ~~[The notice of public hearing may not be in the part of the paper in which legal notices and classified ads appear and may not be smaller than one-quarter page of a standard-size or tabloid-size newspaper, and the headline on the notice must be in 18-point or larger type.]~~

(c) The notice must contain the following:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING  
ON ADOPTION OF IMPACT FEES"

(2) the time, date, and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the adoption of an impact fee;

(4) ~~[an easily understandable map of the service area on which the proposed fee will be levied;~~

~~[(5)]~~ the amount of the proposed impact fee per service unit; and

~~[(5)] [(6)]~~ a statement that any member of the public has the right to appear at the hearing and present evidence for or against the plan and proposed fee.

Sec. 395.050. ADVISORY COMMITTEE COMMENTS ON ~~[CAPITAL IMPROVEMENTS PLAN AND]~~ IMPACT FEES. The advisory committee created under Section 395.058 shall file its written comments on the proposed ~~[capital improvements plan and]~~ impact fees before the fifth business day before the date of the public hearing on the imposition of the ~~[plan and]~~ fees.

Sec. 395.051. APPROVAL OF ~~[CAPITAL IMPROVEMENTS PLAN AND]~~ IMPACT FEE REQUIRED. (a) The political subdivision, within 30 days after the date of the public hearing on the imposition of an ~~[capital improvements plan and]~~ impact fee, shall approve or disapprove the ~~[adoption of the capital improvements plan and]~~ imposition of an impact fee.

(b) An ordinance, order, or resolution approving the ~~[capital improvements plan and]~~ imposition of an impact fee may not be adopted as an emergency measure.

SECTION 6. Section 395.052(a), Local Government Code, is amended to read as follows:

(a) A political subdivision imposing an impact fee shall update the land use assumptions and capital improvements plan at least every five [~~three~~] years. The initial five-year [~~three-year~~] period begins on the day the capital improvements plan is adopted.

SECTION 7. Section 395.055, Local Government Code, is amended to read as follows:

Sec. 395.055. NOTICE OF HEARING ON AMENDMENTS TO LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN, OR IMPACT FEE. (a) The notice and hearing procedures prescribed by Sections 395.044(a) and (b) apply to a hearing on the amendment of land use assumptions, a capital improvements plan, or an impact fee. [Before the 30th day before the date of the hearing on amendments to the land use assumptions, capital improvements plan, or impact fee, the political subdivision shall send a notice of the hearing by certified mail to any person who has given written notice by certified or registered mail to the municipal secretary or other designated official of the political subdivision requesting notice of the hearing within two years preceding the date of adoption of the order or resolution setting the public hearing.]

(b) [The political subdivision shall publish notice of the hearing once a week for three consecutive weeks, the first notice to appear before the 30th day but on or after the 60th day before the date set for the hearing, in one or more newspapers of general circulation in each county in which the political subdivision lies. However, a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may publish the required newspaper notice only in each county in which the service area lies. The notice of public hearing may not be in the part of the paper in which legal notices and classified ads appear and may not be smaller than one-quarter page of a standard-size or tabloid-size newspaper, and the headline on the notice must be in 18-point or larger type.]

[(c)] The notice of a hearing under this section must contain the following:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING  
ON AMENDMENT OF IMPACT FEES"

(2) the time, date, and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the amendment of land use assumptions and a capital improvements plan and the imposition of an impact fee; and

(4) [an easily understandable description and map of the service area on which the update is being prepared; and

[(5)] a statement that any member of the public has the right to appear at the hearing and present evidence for or against the update.

SECTION 8. Subchapter D, Chapter 395, Local Government Code, is amended by adding Section 395.082 to read as follows:

Sec. 395.082. CERTIFICATION OF COMPLIANCE REQUIRED. (a) A political subdivision that imposes an impact fee shall submit a written certification verifying compliance with this chapter to the attorney general each year not later than the last day of the political subdivision's fiscal year.

(b) The certification must be signed by the presiding officer of the governing body of a political subdivision and include a statement that reads substantially similar



to the following: "This statement certifies compliance with Chapter 395, Local Government Code."

(c) A political subdivision that fails to submit a certification as required by this section is liable to the state for a civil penalty in an amount equal to 10 percent of the amount of the impact fees erroneously charged. The attorney general shall collect the civil penalty and deposit the amount collected to the credit of the housing trust fund.

SECTION 9. Sections 395.025(b), 395.046, 395.048, and 395.0515, Local Government Code, are repealed.

SECTION 10. This Act takes effect September 1, 2001.

### **Floor Amendment No. 1 on Third Reading**

Amend **CSSB 243** on third reading as follows:

1. On page 6, line 12, strike "or",
2. On page 6, line 17, at the end of Section 4, insert before the "." the following:  
"; or

(3) a political subdivision that lacks authority to issue building permits in the area where the impact fee applies shall collect the fees at the time an application is filed for an individual meter connection to the political subdivision's water or wastewater system."

The amendments were read.

On motion of Senator Harris, the Senate concurred in the House amendments to **SB 243** by a viva voce vote.

### **SENATE BILL 664 WITH HOUSE AMENDMENT**

Senator Madla called **SB 664** from the President's table for consideration of the House amendment to the bill.

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

### **Amendment**

Amend **SB 664** by substituting in lieu thereof the following:

#### **A BILL TO BE ENTITLED AN ACT**

relating to the investigation of abuse, neglect, or exploitation of persons in certain facilities.

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

SECTION 1. The heading to Subchapter E, Chapter 261, Family Code, is amended to read as follows:

#### **SUBCHAPTER E. INVESTIGATIONS OF ABUSE, [OR] NEGLECT, OR EXPLOITATION IN CERTAIN FACILITIES**

SECTION 2. Section 261.401, Family Code, is amended to read as follows:

Sec. 261.401. **AGENCY INVESTIGATION.** (a) Notwithstanding Section 261.001, in this section:

(1) "Abuse" means an intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility that

causes or may cause emotional harm or physical injury to, or the death of, a child served by the facility as further described by rule or policy.

(2) "Exploitation" means the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility as further described by rule or policy.

(3) "Neglect" means a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility as further described by rule or policy.

(b) A state agency that operates, licenses, certifies, or registers a facility in which children are located shall make a prompt, thorough investigation of a report that a child has been or may be abused, ~~or~~ neglected, or exploited in the facility. The primary purpose of the investigation shall be the protection of the child.

(c) ~~(b)~~ A state agency shall adopt rules relating to the investigation and resolution of reports received as provided by this subchapter. The Health and Human Services Commission shall review and approve the rules of agencies other than the Texas Department of Criminal Justice, Texas Youth Commission, or Texas Juvenile Probation Commission to ensure that those ~~all~~ agencies implement appropriate standards for the conduct of investigations and that uniformity exists among agencies in the investigation and resolution of reports.

(d) The Texas School for the Blind and Visually Impaired and the Texas School for the Deaf shall adopt policies relating to the investigation and resolution of reports received as provided by this subchapter. The Health and Human Services Commission shall review and approve the policies to ensure that the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf adopt those policies in a manner consistent with the minimum standards adopted by the Health and Human Services Commission under Section 261.407.

SECTION 3. Subsections (b), (d), and (e), Section 261.402, Family Code, are amended to read as follows:

(b) A state agency shall immediately notify the appropriate state or local law enforcement agency of any report the agency receives, other than a report from a law enforcement agency, that concerns the suspected abuse, ~~or~~ neglect, or exploitation of a child or the death of a child from abuse or neglect. If the state agency finds evidence indicating that a child may have been abused, ~~or~~ neglected, or exploited, the agency shall report the evidence to the appropriate law enforcement agency.

(c) ~~(d)~~ A state agency that licenses, certifies, or registers a facility in which children are located shall compile, maintain, and make available statistics on the incidence of child abuse, ~~and~~ neglect, and exploitation in the facility.

(d) ~~(e)~~ A state agency shall compile, maintain, and make available statistics on the incidence of child abuse, ~~and~~ neglect, and exploitation in a facility operated by the state agency.

SECTION 4. Subsection (b), Section 261.403, Family Code, is amended to read as follows:

(b) The board of a state agency that operates a facility in which children are located shall ensure that the procedure for investigating abuse, ~~and~~ neglect, and

exploitation allegations and inquiries in the agency's facility is periodically reviewed under the agency's internal audit program required by Chapter 2102, Government Code.

SECTION 5. Subchapter E, Chapter 261, Family Code, is amended by adding Sections 261.407 and 261.408 to read as follows:

Sec. 261.407. MINIMUM STANDARDS. (a) The Health and Human Services Commission by rule shall adopt minimum standards for the investigation under Section 261.401 of suspected child abuse, neglect, or exploitation in a facility.

(b) A rule or policy adopted by a state agency or institution under Section 261.401 must be consistent with the minimum standards adopted by the Health and Human Services Commission.

(c) This section does not apply to a facility under the jurisdiction of the Texas Department of Criminal Justice, Texas Youth Commission, or Texas Juvenile Probation Commission.

Sec. 261.408. INFORMATION COLLECTION. (a) The Health and Human Services Commission by rule shall adopt uniform procedures for collecting information under Section 261.401, including procedures for collecting information on deaths that occur in facilities.

(b) The department shall receive and compile information on investigations in facilities. An agency submitting information to the department is responsible for ensuring the timeliness, accuracy, completeness, and retention of the agency's reports.

(c) This section does not apply to a facility under the jurisdiction of the Texas Department of Criminal Justice, Texas Youth Commission, or Texas Juvenile Probation Commission.

SECTION 6. Subchapter E, Chapter 261, Family Code, is amended by adding Section 261.409 to read as follows:

Sec. 261.409. INVESTIGATIONS IN FACILITIES UNDER TEXAS YOUTH COMMISSION JURISDICTION. The board of the Texas Youth Commission by rule shall adopt standards for:

(1) the investigation under Section 261.401 of suspected child abuse, neglect, or exploitation in a facility under the jurisdiction of the Texas Youth Commission; and

(2) compiling information on those investigations.

SECTION 7. Section 48.301, Human Resources Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) The Health and Human Services Commission by rule shall adopt minimum standards for the investigation of suspected abuse, neglect, or exploitation of an elderly or disabled person under this section.

(g) A rule or policy adopted by a state agency or institution under Subsection (c) must be consistent with the minimum standards adopted by the Health and Human Services Commission.

SECTION 8. This Act takes effect September 1, 2001.

The amendment was read.

On motion of Senator Madla, the Senate concurred in the House amendment to **SB 664** by a viva voce vote.

**SENATE BILL 203 WITH HOUSE AMENDMENTS**

Senator Duncan called **SB 203** from the President's table for consideration of the House amendments to the bill.

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

**Amendment**

Amend **SB 203** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the summoning of potential grand jurors.

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

SECTION 1. Articles 19.06 and 19.17, Code of Criminal Procedure, are amended to read as follows:

Art. 19.06. **SHALL SELECT GRAND JURORS.** The jury commissioners shall select not less than 15 nor more than 40 [20] persons from the citizens of the county to be summoned as grand jurors for the next term of court, or the term of court for which said commissioners were selected to serve, as directed in the order of the court selecting the commissioners. The commissioners shall, to the extent possible, select grand jurors who the commissioners determine represent a broad cross-section of the population of the county, considering the factors of race, sex, and age.

Art. 19.17. **FAILURE TO SELECT.** If for any reason a grand jury shall not be selected or summoned prior to the commencement of any term of court, or when none of those summoned shall attend, the district judge may at any time after the commencement of the term, in his discretion, direct a writ to be issued to the sheriff commanding him to summon a jury commission, selected by the court, which commission shall select not more than 40 [twenty] persons, as provided by law, who shall serve as grand jurors.

SECTION 2. This Act takes effect September 1, 2001.

**Floor Amendment No. 1**

Amend **CSSB 203** by adding an appropriately numbered SECTION to the bill to read as follows and renumbering the existing SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Article 19.01(b), Code of Criminal Procedure, is amended to read as follows:

(b) In lieu of the selection of prospective jurors by means of a jury commission, the district judge may direct that 20 to 125 [75] prospective grand jurors be selected and summoned, with return on summons, in the same manner as for the selection and summons of panels for the trial of civil cases in the district courts. The judge shall try the qualifications for and excuses from service as a grand juror and impanel the completed grand jury in the same manner as provided for grand jurors selected by a jury commission.

The amendments were read.

On motion of Senator Duncan, the Senate concurred in the House amendments to **SB 203** by a viva voce vote.

### CONFERENCE COMMITTEE REPORT ON SENATE BILL 187 ADOPTED

Senator Shapleigh called from the President's table the Conference Committee Report on **SB 187**. The Conference Committee Report was filed with the Senate on Friday, May 4, 2001.

On motion of Senator Shapleigh, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

### SENATE BILL 532 WITH HOUSE AMENDMENT

Senator Nelson called **SB 532** from the President's table for consideration of the House amendment to the bill.

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

#### Amendment

Amend **SB 532** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to medical assistance for certain persons in need of treatment for breast or cervical cancer.

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

SECTION 1. Section 32.024, Human Resources Code, is amended by adding Subsection (x) to read as follows:

(x) The department shall provide medical assistance to a person in need of treatment for breast or cervical cancer who is eligible for that assistance under the Breast and Cervical Cancer Prevention and Treatment Act of 2000 (Pub. L. No. 106-354) for a continuous period during which the person requires that treatment. The department shall simplify the provider enrollment process for a provider of that medical assistance and shall adopt rules to provide for certification of presumptive eligibility of a person for that assistance. In determining a person's eligibility for medical assistance under this subsection, the department, to the extent allowed by federal law, may not require a personal interview.

SECTION 2. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 3. This Act takes effect September 1, 2001.

The amendment was read.

On motion of Senator Nelson, the Senate concurred in the House amendment to **SB 532** by a viva voce vote.

### SENATE BILL 561 WITH HOUSE AMENDMENT

Senator Sibley called **SB 561** from the President's table for consideration of the House amendment to the bill.

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

### Amendment

Amend **SB 561** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to indemnification provisions concerning registered architects and licensed engineers in certain construction contracts.

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

SECTION 1. The heading to Chapter 130, Civil Practice and Remedies Code, is amended to read as follows:

#### CHAPTER 130. INDEMNIFICATION ~~[OF ARCHITECTS AND ENGINEERS]~~ IN CERTAIN CONSTRUCTION CONTRACTS

SECTION 2. Section 130.001, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 130.001. DEFINITION. In this chapter "construction contract" means a contract or agreement made and entered into by an owner, contractor, subcontractor, registered architect, licensed engineer, or supplier concerning the design, construction, alteration, repair, or maintenance of a building, structure, appurtenance, road, highway, bridge, dam, levee, or other improvement to or on real property, including moving, demolition, and excavation connected with the real property.

SECTION 3. Section 130.002, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 130.002. COVENANT OR PROMISE VOID AND UNENFORCEABLE.

(a) A covenant or promise in, in connection with, or collateral to a construction contract is void and unenforceable if the covenant or promise provides for a contractor who is to perform the work that is the subject of the construction contract to indemnify or hold harmless a registered architect, licensed [registered] engineer or an agent, servant, or employee of a registered architect or licensed [registered] engineer from liability for damage that:

(1) is caused by or results from:

(A) defects in plans, designs, or specifications prepared, approved, or used by the architect or engineer; or

(B) negligence of the architect or engineer in the rendition or conduct of professional duties called for or arising out of the construction contract and the plans, designs, or specifications that are a part of the construction contract; and

(2) arises from:

(A) personal injury or death;

(B) property injury; or

(C) any other expense that arises from personal injury, death, or property injury.

(b) A covenant or promise in, in connection with, or collateral to a construction contract other than a contract for a single family or multifamily residence is void and unenforceable if the covenant or promise provides for a registered architect or licensed engineer whose engineering or architectural design services are the subject of the construction contract to indemnify or hold harmless an owner or owner's agent or employee from liability for damage that is caused by or results from the negligence of an owner or an owner's agent or employee.

SECTION 4. Section 130.004, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 130.004. OWNER OF INTEREST IN REAL PROPERTY. (a) Except as provided by Section 130.002(b), this ~~[This]~~ chapter does not apply to an owner of an interest in real property or persons employed solely by that owner.

(b) Except as provided by Section 130.002(b), this ~~[This]~~ chapter does not prohibit or make void or unenforceable a covenant or promise to:

(1) indemnify or hold harmless an owner of an interest in real property and persons employed solely by that owner; or

(2) allocate, release, liquidate, limit, or exclude liability in connection with a construction contract between an owner or other person for whom a construction contract is being performed and a registered architect or licensed ~~[registered]~~ engineer.

SECTION 5. Section 271.904, Local Government Code, is amended to read as follows:

Sec. 271.904. INDEMNIFICATION. (a) ~~A~~ [Except as provided by Subsection (b), a] covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which a governmental agency is a party is void and unenforceable if the covenant or promise provides that a licensed ~~[registered]~~ engineer or registered architect whose work product is the subject of the contract must indemnify or hold harmless the governmental agency against liability for damage that[~~:~~

~~[(1)]~~ is caused by or results from the negligence of the governmental agency or its agent or employee[~~; and~~

~~[(2)] arises from:~~

~~[(A) personal injury or death;~~

~~[(B) property injury; or~~

~~[(C) any other expense that arises from personal injury, death, or property injury].~~

(b) ~~[A covenant under which a registered engineer or registered architect agrees to indemnify or hold harmless a governmental agency or its agent or employees against liability arising from the personal injury or death of the architect or engineer or the employees of the architect or engineer is enforceable.~~

~~[(c)]~~ In this section, "governmental agency" has the meaning assigned by Section 271.003.

SECTION 6. This Act takes effect September 1, 2001, and applies only to a construction contract entered into on or after that date. A construction contract entered into before the effective date of this Act is governed by the law in effect on the date the construction contract was entered into, and the former law is continued in effect for that purpose.

The amendment was read.

On motion of Senator Sibley, the Senate concurred in the House amendment to **SB 561** by a viva voce vote.

#### SENATE BILL 387 WITH HOUSE AMENDMENT

Senator Bivins called **SB 387** from the President's table for consideration of the House amendment to the bill.

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

**Floor Amendment No. 1**

Amend **SB 387** in SECTION 1 of the bill, by striking Subsection (b) of Section 28.0251, Education Code (page 1, lines 15-20, senate engrossment), and substituting the following:

(b) A school district may issue a diploma to a person otherwise eligible under Subsection (a) notwithstanding the fact that the person holds a high school equivalency certificate or is deceased.

The amendment was read.

Senator Bivins moved to concur in the House amendment to **SB 387**.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**SENATE BILL 1158 WITH HOUSE AMENDMENT**

Senator Fraser called **SB 1158** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 1158** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the operation of the Mitchell County Hospital District.

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

SECTION 1. Section 4, Chapter 466, Acts of the 60th Legislature, Regular Session, 1967, is amended to read as follows:

Sec. 4. (a) Upon the effective date of this Act, the following named seven persons shall be and constitute the temporary or provisional directors of the said district: (1) Mrs. Dee Bassham, (2) Murrell Blassingame, (3) Rex McKinney, (4) T. C. Moore, (5) J. W. Randle, (6) Bob Reily, and (7) Wayne Shawn; and each of said directors shall subscribe to the Constitutional oath of office within 60 days of the effective date of this Act. Should any of the named directors refuse to act or for any reason fail to qualify as herein required, the County Judge of Mitchell County shall fill such vacancy. The terms of office of the first, third, fifth and seventh named directors shall expire on the first Saturday in April of the second year following the election for the creation of the district, and the terms of the second, fourth, and sixth named directors shall expire on the first Saturday in April of the year following the election for the creation of the district. Successors shall be elected by a vote of the electors of the entire district for two-year terms.

(b) The directors named herein and their successors in office shall hold office as provisional or temporary directors until such time as the creation of the district has been approved at an election as herein provided. At such time as the creation of the district is so approved and the returns of the election officially canvassed, the persons acting as provisional or temporary directors shall become permanent directors whose



terms shall expire as hereinabove provided. Each permanent director and his successor in office shall qualify by executing the Constitutional oath of office, and such permanent directors, acting as a board, shall have and exercise the powers hereafter conferred on such board.

(c) To be qualified for election to the board of directors, a person must be a qualified voter and a resident of the district. An employee of the district may not serve as a director. A director is not entitled to compensation but is entitled to receive reimbursement for actual expenses incurred in attending to the district's business, provided the expenses are reported in the district's minute book or other district records and approved by the remainder of the board of directors ~~[No person shall be a member of the board of directors of said hospital district unless he is a resident thereof and owns land subject to taxation therein and unless at the time of such election or appointment he shall be more than 21 years of age].~~

(d) The board of directors shall organize by electing one of their number as president and one of their number as vice president. The board of directors shall also elect one person who is not required to be a director to serve as secretary and treasurer. Each officer serves a one-year term ~~[A secretary, who need not be a director, shall also be elected by said directors]~~. Any four members of the board of directors shall constitute a quorum and a concurrence of four shall be sufficient in all matters pertaining to the business of the district. All vacancies in the office of director shall be filled for the unexpired term by a majority vote ~~[appointment]~~ of the remainder of the board of directors, and the person elected to fill the vacancy shall hold office for the remainder of the unexpired term. In the event the number of directors shall be reduced to less than four for any reason, the remaining directors shall immediately call a special election to fill said vacancies, and upon failure to do so, a district court, upon application of any qualified voter ~~[elector]~~ or taxpayer of the district, may issue a mandate requiring that such election be ordered by the remaining directors.

(e) The board of directors shall order a ~~[A]~~ regular election of directors to ~~[shall]~~ be held on the first Saturday in May ~~[April]~~ of each year. The board of directors shall issue the order at least 45 days before the date of the election. The order must state the time, place, and purpose of the election. The board of directors shall appoint the presiding judge, who shall appoint election clerks as required. Notice ~~[and notice]~~ of such election shall be published in a newspaper of general circulation in the district one time at least 10 days prior to the date of election. Any person desiring that person's ~~[his]~~ name to be printed on the ballot as a candidate for director shall file an application ~~[a petition, signed by not less than 25 qualified electors, asking that such name be printed on the ballot,]~~ with the secretary of the board of directors of the district ~~[Such petition shall be so filed]~~ at least 31 ~~[25]~~ days prior to the date of election.

SECTION 2. Section 5, Chapter 466, Acts of the 60th Legislature, Regular Session, 1967, is amended to read as follows:

Sec. 5. (a) The board of directors shall manage, control and administer the hospitals and hospital system of the district. The district through its board of directors shall have the power and authority to sue and be sued and to promulgate rules and regulations for the operation of the district. The board of directors shall appoint a qualified person to be known as the administrator ~~[or manager]~~ of the hospital district and may in its discretion appoint an assistant to the administrator ~~[or manager]~~. Such administrator ~~[or manager]~~ and assistant administrator ~~[or assistant manager]~~, if any,

shall serve at the will of the board and shall receive such compensation as may be fixed by the board. The board may require the [The] administrator [or manager shall], upon assuming the administrator's [his] duties, to execute a bond payable to the hospital district in an amount to be set by the board of directors, in no event less than \$5,000, conditioned that the administrator [he] shall perform the duties required [of him], and containing such other conditions as the board may require. The board may pay for the bond with district funds. The administrator [or manager] shall supervise all the work and activities of the district and shall have general direction of the affairs of the district, subject to such limitations as may be prescribed by the board. The board of directors shall have the authority to employ or appoint to the staff such doctors, technicians, nurses and other employees of every kind and character as may be deemed necessary for the efficient operation of the district. The board may provide that the administrator [or manager] shall have the authority to employ technicians, nurses and employees of the district.

(b) The [Such] board of directors shall be authorized to contract with any county or incorporated municipality located outside its boundaries for the care and treatment of the sick, diseased, or injured persons of any such county or municipality, and shall have the authority to contract with the State of Texas or agencies of the federal government for the treatment of sick, diseased, or injured persons.

(c) The board of directors may provide retirement benefits for the employees of the district by establishing or administering a retirement program or electing to participate in a statewide retirement system.

(d) The board of directors may spend district funds to recruit physicians, nurses, and other trained medical personnel.

(e) The board of directors may institute a suit to enforce the payment of taxes and to foreclose liens to secure the payment of taxes due to the district.

(f) The board of directors may provide or contract to provide educational programs or courses for employees and medical staff of the district.

(g) The board of directors may institute a suit to collect amounts owed to the district by patients who are not able to pay under Section 17 of this Act.

(h) The district may sponsor and create a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) and may contribute funds to or solicit funds for the corporation. The corporation may use district funds only to provide health care or other services the district is authorized to provide under this Act. The board of directors shall establish adequate controls to ensure the corporation uses funds as required by this subsection. The corporation may invest corporation funds in any manner in which the district may invest funds, including investing funds as authorized by Chapter 2256, Government Code.

SECTION 3. Section 6, Chapter 466, Acts of the 60th Legislature, Regular Session, 1967, is amended to read as follows:

Sec. 6. The district operates [shall be operated] on the [basis of a] fiscal year established by the board of directors. The fiscal year may not be changed if revenue bonds of the district are outstanding or more than once in a 24-month period. The board of directors [commencing on October 1 of each year and ending on September 30 of the following year, and it] shall cause an annual audit to be made of the financial condition of the [said] district, which together with other records of the district shall be open to inspection at the principal office of the district. The

administrator [~~or manager~~] shall prepare an annual budget for approval by the board of directors. A public hearing on the annual budget shall be held by the board of directors after notice of such hearing has been published in a newspaper of general circulation in the district one time at least 10 days before the date set for the hearing [~~therefor~~]. No expenditure may be made for any expense not included in the annual budget or an amendment thereto. The annual budget may be amended from time to time as the circumstances may require, but the annual budget, and all amendments thereto, shall be approved by the board of directors. As soon as practicable after the close of each fiscal year, the administrator [~~or manager~~] shall prepare for the board a full sworn statement of all moneys belonging to the district and a full account of the disbursements of same.

SECTION 4. Chapter 466, Acts of the 60th Legislature, Regular Session, 1967, is amended by amending Section 7 and adding Sections 7A, 7B, and 7C to read as follows:

Sec. 7. (a) The board of directors may issue and sell bonds authorized by an election in the name and on the faith and credit of the hospital district to purchase, construct, acquire, repair, or renovate buildings or improvements, equip buildings or improvements for hospital purposes, or acquire and operate a mobile emergency medical or air ambulance service.

(b) At the time the bonds are issued by the district, the board of directors shall levy a tax. The tax must be sufficient to create an interest and sinking fund to pay the principal of and interest on the bonds as they mature. In any year, the tax together with any other tax the district levies may not exceed the limit approved by the voters at the election authorizing the levy of taxes.

(c) The district may issue general obligation bonds only if the bonds are authorized by a majority of the qualified voters of the district voting at an election called and held for that purpose. The board of directors may order a bond election.

(d) The bond election shall be conducted as provided by Chapter 1251, Government Code.

Sec. 7A. (a) The board of directors may issue revenue bonds to purchase, construct, acquire, repair, equip, or renovate buildings or improvements for hospital purposes, acquire sites to be used for hospital purposes, or acquire and operate a mobile emergency medical or air ambulance service to assist the district in carrying out its hospital 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's hospital system. 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, Health and Safety Code, for issuance of revenue bonds by county hospital authorities [The board of directors shall have the power and authority to issue and sell its bonds in the name and upon the faith and credit of such hospital district for the purchase, construction, acquisition, repair, or renovation of buildings and improvements and equipping the same for hospital purposes, and for any or all of such purposes. At the time of the issuance of any bonds by the district a tax shall be levied by the board sufficient to create an interest and sinking fund to pay the interest on and principal of said bonds as same mature;

providing such tax together with any other taxes levied for said district shall not exceed 75 cents on each \$100 valuation of taxable property in any one year. No bonds shall be issued by such hospital district except refunding bonds until authorized by a majority of the qualified electors of the district who own taxable property therein and who have duly rendered the same for taxation voting at an election called for such purpose. The order for bond election shall specify the date of the election, the amount of bonds to be authorized, the maximum maturity thereof, the maximum rate of interest they are to bear, the place or places where the election shall be held, the presiding judge and alternate judge for each voting place and provide for clerks as in county elections. Notice of any bond election (except one held under the provisions of Section 8, in which instance notice shall be given as provided in Section 3) shall be given as provided in Article 704, Revised Civil Statutes of Texas, 1925, as amended, and shall be conducted in accordance with the general laws of Texas pertaining to general elections, except as modified by the provisions of this Act].

Sec. 7B. Refunding bonds of the district may be issued for the purpose of refunding and paying off any outstanding indebtedness it has issued or assumed. The refunding bonds shall be issued in accordance with Chapter 1207, Government Code [Such refunding bonds may be sold and the proceeds thereof applied to the payment of outstanding indebtedness, or may be exchanged in whole or in part for not less than a like principal amount of such outstanding indebtedness provided that, if refunding bonds are to be exchanged for a like amount of said outstanding indebtedness, such refunding bonds shall bear interest at the same or lower rate than borne by the debt refunded, unless it is shown mathematically that a saving will result in the total amount of interest to be paid on said refunding bonds, and provided further that if such refunding bonds are to be sold and the proceeds thereof applied to the payment of any such outstanding indebtedness, same shall be issued and payments made in the manner specified by Article 717k, Vernon's Texas Civil Statutes].

Sec. 7C. Bonds of the district shall bear interest at a rate not to exceed the rate provided by Chapter 1204, Government Code [six per centum per annum], shall mature within 40 years of their date, shall be executed in the name of the hospital district and in its behalf by the president of the board and countersigned by the secretary in the manner provided by Chapter 618, Government Code [Article 717j-1, Vernon's Texas Civil Statutes], and shall be subject to the same requirements in the matter of approval by the Attorney General of Texas and registration by the Comptroller of Public Accounts of the State of Texas as are by law provided for approval and registration of bonds issued by counties. Upon the approval of such bonds by the Attorney General and registration by the Comptroller, the same shall be incontestable for any cause.

SECTION 5. Section 9, Chapter 466, Acts of the 60th Legislature, Regular Session, 1967, is amended to read as follows:

Sec. 9. (a) The board of directors is hereby given complete discretion as to the type of buildings (both as to number and location) required to establish and maintain an adequate hospital system. Nothing herein shall prohibit the establishing and equipping of a clinic as a part of the hospital system.

(b) The board of directors may purchase or lease property, facilities, and equipment for the district to use in the hospital system and may mortgage or pledge the property, facilities, or equipment as security for the payment of the purchase price.

(c) The board of directors may enter into a contract or contracts to provide

administrative and other personnel for the operation of the hospital facilities, but in no event may a contract be for a period that exceeds 25 years from the date the contract is entered. The board may transfer district hospital facilities by lease to individuals, corporations, or other legal entities and may sell or otherwise dispose of the district's property, facilities, and equipment [The district, through its board of directors, is further authorized to enter into an operating or management contract with regard to its facilities or a part thereof, or may lease all or part of its buildings and facilities upon terms and conditions considered to be to the best interest of its inhabitants, provided that in no event shall any lease be for a period in excess of 25 years from the date entered. The district shall be empowered to sell or otherwise dispose of any property (real or personal) or equipment of any nature upon terms and conditions found by the board to be in the best interest of its inhabitants].

SECTION 6. Section 10, Chapter 466, Acts of the 60th Legislature, Regular Session, 1967, is amended to read as follows:

Sec. 10. The board of directors of such district shall have the power to prescribe the method and manner of making purchases and expenditures by and for such hospital district, and also shall be authorized to prescribe all accounting and control procedures. The board may contract for construction only after competitive bidding as provided by Subchapter B, Chapter 271, Local Government Code [All purchases involving the expenditure of more than \$2,000 may be made only after advertising in the manner provided by Article 2368a, Vernon's Texas Civil Statutes, as amended]. The district may acquire equipment for use in its hospital system and mortgage or pledge the property so acquired as security for the payment of the purchase price, but any such contract shall provide for the entire obligation of the district to be retired within five years from the date of the contract. Except as permitted in the preceding sentence and as permitted by Sections 7, 7A, 7B, 7C, and 8, the district may incur no obligation payable from any revenues of the district (taxes or otherwise) except those on hand or to be on hand within the then current fiscal year of the district.

SECTION 7. Section 11, Chapter 466, Acts of the 60th Legislature, Regular Session, 1967, is amended to read as follows:

Sec. 11. The board of directors of the district shall name one or more banks [within its boundaries] to serve as depository for the funds of the district. All such funds shall, as derived and collected, be immediately deposited with such depository bank or banks, except that sufficient funds shall be remitted to the place or places designated as agent for the payment of principal of and interest on the outstanding bonds of the district or other obligations assumed by it and in time that such money may be received by said agent or agents for payment on or prior to the date of maturity of such principal and interest so to be paid. To the extent that funds in the depository bank or banks are not insured by the Federal Deposit Insurance Corporation, they shall be secured in the manner provided by law for security of county funds. Membership on the board of directors of an officer or director of a bank shall not disqualify such bank from being designated as depository.

SECTION 8. Section 14, Chapter 466, Acts of the 60th Legislature, Regular Session, 1967, is amended to read as follows:

Sec. 14. The district shall have the right and power of eminent domain for the purpose of acquiring by condemnation any and all property of any kind and character in fee simple, or any lesser interest therein, within the boundaries of the district necessary or convenient to the powers, rights and privileges conferred by this Act, in the manner provided by the general law with respect to condemnation by counties,

provided that the district shall not be required to make deposits in the registry of the trial court of the sum required by ~~Section 21.021(a), Property Code [paragraph 2 of Article 3268, Revised Civil Statutes of Texas, 1925, as amended]~~, or to make bond as therein provided. In condemnation proceedings being prosecuted by the district, the district shall not be required to pay in advance or give bond or other security for costs in the trial court, nor to give any bond otherwise required for the issuance of a temporary restraining order or a temporary injunction nor to give bond for costs or for supersedeas on any appeal or writ of error.

SECTION 9. Section 15, Chapter 466, Acts of the 60th Legislature, Regular Session, 1967, is amended to read as follows:

Sec. 15. The board of directors may annually impose property taxes in an amount not to exceed the limit approved by the voters at an election authorizing the levy of taxes. The tax rate for all district purposes may not exceed 75 cents on each \$100 valuation of all taxable property in the district. The taxes may be used to pay for indebtedness issued or assumed by the district and for the maintenance and operating expenses of the district. The district may not impose taxes to pay the principal of or interest on revenue bonds. The Tax Code governs the appraisal, assessment, and collection of district taxes. The board may provide for the appointment of a tax assessor-collector for the district or may contract for the assessment and collection of taxes as provided by the Tax Code ~~[The district taxes shall be assessed and collected on county tax values in the same manner as provided by law with relation to county taxes upon all taxable property within said district subject to hospital district taxation: The tax assessor-collector of the county in which said district is situated shall be charged and required to accomplish the assessment and collection of all taxes levied by and on behalf of the district. The assessor-collector of taxes shall charge and deduct from payments to the hospital district an amount as fees for assessing and collecting the taxes at a rate of one percent of the taxes assessed and one percent of the taxes collected, but in no event shall the amount paid exceed \$5,000 in any one calendar year. Such fees shall be deposited in the officers' salary fund of the county and reported as fees of office of the county tax assessor-collector. Interest and penalties on taxes paid to the hospital district shall be the same as in the case of county taxes. Discounts shall be the same as allowed by the county. The residue of tax collections after deduction of discounts and fees for assessing and collecting shall be deposited in the district's depository. The board of directors shall have the authority to levy the aforesaid tax for the entire year in which said district is established as the result of the election herein provided. The bond of the county tax assessor-collector shall stand as security for the proper performance of his duties as assessor-collector of the district, or, if in the judgment of the district board of directors it is necessary, additional bond payable to the district may be required. In all matters pertaining to the assessment, collection and enforcement of taxes for the district, the county tax assessor-collector shall be authorized to act in all respects according to the laws of the State of Texas relating to state and county taxes].~~

SECTION 10. Section 17, Chapter 466, Acts of the 60th Legislature, Regular Session, 1967, is amended to read as follows:

Sec. 17. Whenever a patient residing within the district has been admitted to the facilities thereof, the administrator ~~[or manager]~~ may cause inquiry to be made as to the person's financial [his] ~~the financial circumstances [those]~~ circumstances [those] of a relative [the relatives] ~~of the [such]~~ patient who is legally liable for the patient's [his]

support. On the administrator's finding [If he finds] that the [such] patient or a relative who is legally responsible for the patient's support is [said relatives are] able to pay for all or any part of the patient's [his] care and treatment provided to the patient by the district [in whole or in part], an order shall be made directing the [such] patient or the relative [said relatives] to pay to the hospital district for the care and support of such patient a specified sum per week in proportion to [their] financial ability. The administrator [or manager] shall have power and authority to collect such sums from the estate of the patient or the relative who is [his relatives] legally responsible [liable] for the patient's [his] support in the manner provided by law for collection of expenses in the last illness of a deceased person. If the administrator [or manager] finds that the [such] patient or the relative is [said relatives are] not able to pay either in whole or in part for the patient's [his] care and treatment in the [such] hospital, same shall become a charge upon the hospital district as to the amount of the inability to pay. Should there be any dispute as to the ability to pay or doubt in the mind of the administrator concerning ability to pay [or manager], the board of directors shall hear and determine same after calling witnesses, and shall make such order or orders as may be proper. Appeals from a final order of the board shall lie to the district court. [The substantial evidence rule shall apply.]

SECTION 11. Chapter 466, Acts of the 60th Legislature, Regular Session, 1967, is amended by adding Sections 20A, 20B, and 20C to read as follows:

Sec. 20A. (a) If the board of directors determines that funds are not available to meet lawfully authorized obligations of the district and that an emergency exists, the board of directors may borrow money at a rate not to exceed the maximum annual percentage rate allowed by law for district obligations at the time the loan is made.

(b) To secure a loan, the board of directors may pledge:

(1) revenues of the district that are not pledged to pay bonded indebtedness of the district;

(2) tax revenue to be collected by the district in the next 12-month period that has not been pledged to pay the principal of or interest on district bonds; or

(3) district bonds that have been authorized but have not been sold.

(c) A loan for which tax revenue or bonds are pledged must mature not later than the first anniversary of the date on which the loan was made. A loan for which other district revenues are pledged must mature not later than the fifth anniversary of the date on which the loan was made.

(d) The board of directors may not spend loan proceeds under this section for any purpose other than the purpose for which the board declared an emergency existed. If tax revenues or bonds are pledged to pay the loan, the board of directors may not use the loan proceeds for a purpose other than for the purpose for which the taxes were imposed or the bonds were authorized.

Sec. 20B. (a) The board of directors may borrow money at a rate not to exceed the maximum annual percentage rate allowed by law for district obligations at the time of the loan.

(b) To secure a loan, the board of directors may pledge:

(1) revenues of the district that are not pledged to pay bonded indebtedness of the district;

(2) tax revenue to be collected by the district in the next 12-month period that has not been pledged to pay the principal of or interest on district bonds; or

(3) district bonds that have been authorized but have not been sold.

(c) A loan for which tax revenue or bonds are pledged must mature not later than the first anniversary of the date on which the loan was made. A loan for which other district revenues are pledged must mature not later than the fifth anniversary of the date on which the loan was made.

Sec. 20C. (a) The district may be dissolved only if the dissolution is approved by a majority of the qualified voters of the district voting in an election called and held for that purpose.

(b) The board of directors may order an election on the question of dissolving the district and disposing of the district's assets and obligations. The board of directors shall order an election to be held on the question of dissolution of the district if the board of directors receives a petition requesting an election that is signed by at least 15 percent of the registered voters of the district.

(c) The election shall be held not later than the 60th day after the date the election is ordered. Section 41.001(a), Election Code, does not apply to an election ordered under this section. The order calling the election must state:

(1) the nature of the election, including the proposition that is to appear on the ballot;

(2) the date of the election;

(3) the hours during which the polls will be open; and

(4) the location of the polling places.

(d) The board of directors shall give notice of the election by publishing a copy of the election order in a newspaper with general circulation in the district once a week for two consecutive weeks. The first publication must appear on or before the 35th day before the date set for the election. The ballot for an election at which the dissolution of the district is proposed shall be printed to permit voting for or against the proposition: "The dissolution of the Mitchell County Hospital District."

(e) If a majority of the votes in the election favor dissolution, the board of directors shall find that the district is dissolved. If a majority of the votes in the election do not favor dissolution, the board of directors shall continue to administer the district, and another election on the question of dissolution may not be held before the first anniversary of the most recent election to dissolve the district.

(f) If a majority of the votes in the election favor dissolution, the board of directors shall:

(1) transfer the land, buildings, improvements, equipment, and other assets that belong to the district to a county or to another governmental entity in Mitchell County;

(2) sell the assets and liabilities to another person or entity; or

(3) administer the property, assets, and debts until all funds have been disposed of and all district debts have been paid or settled.

(g) If the district transfers the land, buildings, improvements, equipment, and other assets to a county or other governmental entity, the county or entity assumes all debts and obligations of the district at the time of the transfer, at which time the district is dissolved. If the district does not transfer the land, buildings, improvements, equipment, and other assets to a county or other governmental entity, or sell those assets and the liabilities to another person, the board of directors shall administer the property, assets, and debts of the district until all funds have been disposed of and all district debts have been paid or settled, at which time the district is dissolved.



(h) After the board of directors finds that the district is dissolved, the board of directors shall:

(1) determine the debt owed by the district; and

(2) impose on the property included in the district's tax rolls a tax that is in proportion of the debt to the property value.

(i) When all outstanding debts and obligations of the district are paid, the board of directors shall order the person serving as secretary and treasurer to return the pro rata share of all unused tax money to each district taxpayer.

(j) A taxpayer may request that the taxpayer's share of surplus tax money be credited to the taxpayer's county taxes. If a taxpayer requests the credit, the board of directors shall direct the person serving as secretary and treasurer to transmit the funds to the county tax assessor-collector.

(k) After the district has paid all its debts and has disposed of all its assets and funds as prescribed by this section, the board of directors shall file a written report with the Commissioners Court of Mitchell County setting forth a summary of the board of directors' actions in dissolving the district.

(l) Not later than the 10th day after the date it receives the report and determines that the requirements of this section have been fulfilled, the Commissioners Court of Mitchell County shall enter an order dissolving the district and releasing the board of directors of the district from any further duty or obligation.

(m) The district may provide for the sale or transfer of the district's assets and liabilities to another person or entity and the district's subsequent dissolution. The dissolution of the district and the sale or transfer of the district's assets and liabilities to another person or entity may not contravene a trust indenture or bond resolution relating to the outstanding bonds of the district. The dissolution and sale or transfer does not diminish or impair the rights of a holder of an outstanding bond, warrant, or other obligation of the district.

(n) The sale or transfer of the district's assets and liabilities must satisfy the debt and bond obligations of the district in a manner that protects the interests of the residents of the district, including the residents' collective property rights in the district's assets. A grant from federal funds is an obligation to be repaid in satisfaction. The district may not transfer or dispose of the district's assets except for due compensation unless the transfer is made to another governmental entity that serves the district and the transferred assets are to be used for the benefit of the residents of the district.

SECTION 12. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2001.

The amendment was read.

Senator Fraser moved to concur in the House amendment to **SB 1158**.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**SENATE BILL 916 WITH HOUSE AMENDMENT**

Senator Jackson called **SB 916** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 916** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the disposition by municipalities of property in certain air navigation facilities.

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

SECTION 1. Section 22.024, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d) Notwithstanding Subsection (a), the competitive bidding requirements of Chapters 252 and 272, Local Government Code, do not apply to an exchange, sale, lease, or other disposition of land or other real property interest by a municipality if:

(1) the land or other property interest is part of an air navigation facility that is a former military installation; and

(2) the disposition:

(A) is part of a plan to redevelop the facility as an airport-related industrial park or community; and

(B) promotes the best interest of the municipality.

SECTION 2. This Act takes effect September 1, 2001.

The amendment was read.

On motion of Senator Jackson, the Senate concurred in the House amendment to **SB 916** by a viva voce vote.

**SENATE BILL 1194 WITH HOUSE AMENDMENT**

Senator Wentworth called **SB 1194** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 1194** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the protection of bats; providing a penalty.

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

SECTION 1. Subchapter B, Chapter 63, Parks and Wildlife Code, is amended by adding Section 63.101 to read as follows:

Sec. 63.101. PROTECTION OF BATS. (a) Except as provided by Subsections (b) and (c), no person may:

(1) hunt a bat; or

(2) sell, offer for sale, purchase, offer to purchase, or possess after purchase a bat or any part of a bat, dead or alive.

(b) A bat may be removed or hunted if the bat is inside or on a building occupied by people.

(c) This section does not apply to:

(1) an animal control officer, a peace officer, or a health official who captures a bat that the officer or official considers injured or diseased;

(2) a person who transports a bat for the purpose of laboratory testing if the bat has exposed or potentially exposed humans or domestic animals to rabies; or

(3) a person who is licensed to provide pest control services.

SECTION 2. Section 63.104(c), Parks and Wildlife Code, is amended to read as follows:

(c) A person who violates Section 63.002 or 63.101 of this code commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

SECTION 3. This Act takes effect September 1, 2001, and applies only to an act described by Section 63.101, Parks and Wildlife Code, as added by this Act, committed on or after that date.

The amendment was read.

On motion of Senator Wentworth, the Senate concurred in the House amendment to **SB 1194** by a viva voce vote.

### **SENATE BILL 694 WITH HOUSE AMENDMENT**

Senator Wentworth called **SB 694** from the President's table for consideration of the House amendment to the bill.

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

#### **Amendment**

Amend **SB 694** by substituting in lieu thereof the following:

#### **A BILL TO BE ENTITLED**

#### **AN ACT**

relating to the confidentiality of credit card, debit card, charge card, and access device numbers that are collected, assembled, or maintained by a governmental body and of certain e-mail addresses.

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

SECTION 1. Subchapter C, Chapter 552, Government Code, is amended by adding Sections 552.136 and 552.137 to read as follows:

Sec. 552.136. CONFIDENTIALITY OF CREDIT CARD, DEBIT CARD, CHARGE CARD, AND ACCESS DEVICE NUMBERS. (a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Sec. 552.137. CONFIDENTIALITY OF CERTAIN E-MAIL ADDRESSES. (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2001.

The amendment was read.

Senator Wentworth moved to concur in the House amendment to **SB 694**.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

### **SENATE BILL 324 WITH HOUSE AMENDMENT**

Senator Brown called **SB 324** from the President's table for consideration of the House amendment to the bill.

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

#### **Amendment**

Amend **SB 324** by substituting in lieu thereof the following:

#### **A BILL TO BE ENTITLED AN ACT**

relating to applications and fees for injection well permits.

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

SECTION 1. Sections 27.012 and 27.014, Water Code, are amended to read as follows:

Sec. 27.012. APPLICATION FOR PERMIT. (a) The commission shall prescribe forms for application for a permit and shall make the forms available on request without charge.

(b) Applications for hazardous and nonhazardous disposal well permits shall be processed in accordance with this chapter for the benefit of the state and the preservation of its natural resources.

Sec. 27.014. APPLICATION FEE. With each application for a disposal well permit, the commission shall collect a fee in the amount provided by and under the terms of Section 5.235 [of \$25 for the benefit of the state].

SECTION 2. Sections 27.051(d) and (e), Water Code, are amended to read as follows:

(d) The commission, in determining if the use or installation of an injection well ~~[for the disposal of hazardous waste]~~ is in the public interest under Subsection (a)(1) of this section, shall consider, but shall not be limited to the consideration of:

(1) compliance history of the applicant and related entities in accordance with the provisions of Subsection (e) of this section;

(2) whether there is a practical, economic, and feasible alternative to an injection well reasonably available ~~[to manage the types and classes of hazardous waste];~~ and

(3) if the injection well will be used for the disposal of hazardous waste, whether the applicant will maintain sufficient public liability insurance for bodily injury and property damage to third parties that is caused by sudden and non-sudden accidents or will otherwise demonstrate financial responsibility in a manner adopted by the commission in lieu of public liability insurance. A liability insurance policy which satisfies the policy limits required by the hazardous waste management regulations of the commission for the applicant's proposed pre-injection facilities shall be deemed "sufficient" under this subdivision if the policy:

(A) covers the injection well; and

(B) is issued by a company that is authorized to do business and to write that kind of insurance in this state and is solvent and not currently under supervision or in conservatorship or receivership in this state or any other state.

(e) The commission shall establish a procedure for the preparation of comprehensive summaries of the applicant's compliance history, including the compliance history of any corporation or business entity managed, owned, or otherwise closely related to the applicant [by rule for its preparation of compliance summaries relating to the history of compliance and noncompliance by the applicant with the rules adopted or orders or permits issued by the commission under this chapter for any injection well for which a permit has been issued under this chapter]. The [compliance] summaries shall be made available to the applicant and any interested person after the commission has completed its technical review of the permit application and prior to the promulgation of the public notice relating to the issuance of the permit. Evidence of compliance or noncompliance by an applicant for an injection well permit [for the disposal of hazardous waste] with environmental statutes and the rules adopted or orders or permits issued by the commission [under this chapter] may be offered by any party at a hearing on the applicant's application and admitted into evidence subject to applicable rules of evidence. Evidence of the compliance history of an applicant for an injection well permit may be offered by the executive director at a hearing on the application and admitted into evidence subject to the rules of evidence. All evidence admitted, including compliance history, shall be considered by the commission in determining whether to issue, amend, extend or renew a permit. If the commission concludes that the applicant's compliance history is unacceptable, the commission shall deny the permit.

SECTION 3. (a) Section 27.014, Water Code, as amended by this Act, applies only to an application for a disposal well permit submitted on or after the effective date of this Act.

(b) Sections 27.012 and 27.051, Water Code, as amended by this Act, apply to an application for a disposal or injection well permit pending on or submitted on or after the effective date of this Act.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2001.

The amendment was read.

Senator Brown moved to concur in the House amendment to **SB 324**.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**SENATE BILL 1837 ON SECOND READING**

Senator Shapleigh asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

**SB 1837**, Relating to the creation of the Texas Border Strategic Investment Commission; making an appropriation.

There was objection.

Senator Shapleigh then moved to suspend the regular order of business and take up **SB 1837** for consideration at this time.

The motion prevailed by the following vote: Yeas 24, Nays 5, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Gallegos, Harris, Haywood, Lindsay, Lucio, Madla, Moncrief, Shapiro, Shapleigh, Sibley, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Ellis, Fraser, Nelson, Ogden, Staples.

Present-not voting: Mr. President.

Absent: Jackson.

The bill was read second time and was passed to engrossment by a viva voce vote.

**RECORD OF VOTES**

Senators Fraser, Nelson, Ogden, and Staples asked to be recorded as voting "Nay" on the passage of **SB 1837** to engrossment.

**SENATE BILL 1837 ON THIRD READING**

Senator Shapleigh moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 1837** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 3, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Ellis, Gallegos, Harris, Haywood, Jackson, Lindsay, Lucio, Madla, Moncrief, Ogden, Shapiro, Shapleigh, Sibley, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Fraser, Nelson, Staples.

Present-not voting: Mr. President.

The bill was read third time and was passed by the following vote: Yeas 26, Nays 4, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Ellis, Gallegos, Harris, Haywood, Jackson, Lindsay, Lucio, Madla, Moncrief,

Shapiro, Shapleigh, Sibley, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Fraser, Nelson, Ogden, Staples.

Present-not voting: Mr. President.

### **GUESTS PRESENTED**

Senator Zaffirini was recognized and introduced to the Senate Sister Rosemary Welsh, Sisters of Mercy; Javier Iruegas, Chief Executive Officer, Mercy Health System of Texas; and Dr. J. Charles Jennett, President, Texas A&M International University.

The Senate welcomed its guests.

### **SENATE RESOLUTION 962**

Senator Ogden offered the following resolution:

WHEREAS, First Lieutenant Turney W. Leonard of the United States Army, who was raised in Dallas, Texas, and was a 1942 graduate of Texas A&M University, lost his life after heroic action in a World War II battle at Kommerscheidt, Germany, in November of 1944; and

WHEREAS, First Lieutenant Leonard was posthumously awarded the nation's highest award for bravery, the Congressional Medal of Honor, upon the recommendation of his commanding officer, the late Captain Marion C. Pugh, a fellow Texas A&M University graduate, Class of 1941, who described First Lieutenant Leonard as "the bravest man I ever saw"; and

WHEREAS, First Lieutenant Leonard's heroic actions during the fierce November 4-6, 1944, encounter shortly before the legendary Battle of the Bulge are described in the citation that accompanied his Congressional Medal of Honor, which states:

*"First Lieutenant Turney W. Leonard, U.S. Army Company C, 893rd Tank Destroyer Battalion, for conspicuous gallantry and intrepidity at the risk of life above and beyond the call of duty. Lieutenant Leonard displayed extraordinary heroism while commanding a platoon of mobile weapons at Kommerscheidt, Germany, on 4, 5, and 6 November 1944. During the fierce 3-day engagement, he repeatedly braved overwhelming enemy fire in advance of his platoon to direct the fire of his tank destroyer from exposed, dismounted positions. He went on lone reconnaissance missions to discover what opposition his men faced, and on one occasion, when fired upon by a hostile machine gun, advanced alone and eliminated the enemy emplacement with a hand grenade. When a strong German attack threatened to overrun friendly positions, he moved through withering artillery, mortar, and small arms fire, reorganized confused infantry units whose leaders had become casualties and exhorted them to hold firm. Although wounded early in battle, he continued to direct fire from his advanced position until he was disabled by a high-explosive shell which shattered his arm, forcing him to withdraw. He was last seen at a medical aid station which was subsequently captured by the enemy. By his superb courage, inspiring leadership, and indomitable fighting spirit, 1st Lt. Leonard enabled our forces to hold off the enemy attack and was personally responsible for the direction of fire which destroyed six German tanks;" and*

WHEREAS, First Lieutenant Leonard's class ring was found about 1946 by Mr. Alfred Hutmacher, a resident of Kommerscheidt who was assisting in relocating the graves of American soldiers killed during the battle two years earlier, and who stored it away and essentially forgot about it for more than half a century, not knowing its significance; and

WHEREAS, Mr. Hutmacher's son-in-law, German Army Lieutenant Obit Volker Lossner, became aware of the ring in mid-2000 and, wanting to return the ring to its owner, contacted Colonel Thomas C. Fosnacht, a United States Army liaison officer stationed in Germany; and

WHEREAS, Colonel Fosnacht, recognizing the significance of the ring, contacted Texas A&M University officials, prompting President Ray M. Bowen to invite Lieutenant Lossner to come to Texas and personally return the ring to the family of First Lieutenant Leonard; and

WHEREAS, More than 30 members of the Leonard family attended the ceremony at Texas A&M University on Veterans Day, November 11, 2000, at which time Lieutenant Lossner formally presented the ring to First Lieutenant Leonard's brother, Mr. Douglas Leonard of Dallas, Texas, who represented the entire Leonard family; and

WHEREAS, Mr. Leonard announced at the ceremony that family members wanted to give Lieutenant Leonard's ring and Congressional Medal of Honor to Texas A&M University for permanent public display; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 77th Legislature, hereby express gratitude to Mr. Alfred Hutmacher and to Lieutenant Obit Volker Lossner for returning the ring to the Leonard family, and to Colonel Thomas C. Fosnacht for his invaluable assistance in facilitating the return of the ring; and, be it further

RESOLVED, That the Texas Senate hereby commend the family of the late First Lieutenant Turney W. Leonard for graciously giving his class ring and Congressional Medal of Honor to Texas A&M University so that all Texans, other Americans, and other interested individuals from other countries will have the opportunity to see these historical treasures and learn of the bravery of one of Texas' finest sons; and, be it further

RESOLVED, That official copies of this Resolution be prepared for members of the family of Turney W. Leonard, for Mr. Alfred Hutmacher and Lieutenant Obit Volker Lossner, for Colonel Thomas C. Fosnacht, and for the Archives of Texas A&M University.

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, the resolution was adopted by a rising vote of the Senate.

### **GUESTS PRESENTED**

Senator Ogden was recognized and introduced to the Senate family members of First Lieutenant Turney W. Leonard: his brother, Douglas Leonard, and his wife, Nettie; his niece, Karen Kershaw; his nephew, Randy Leonard; his niece, Kathleen Zahrt; and Dr. Ray Bowen, President of Texas A&M University.

The Senate welcomed its guests.



**SENATE BILL 488 ON SECOND READING**

Senator Harris asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

**SB 488**, Relating to the recognition of a same-sex marriage or civil union.

There was objection.

Senator Harris then moved to suspend the regular order of business and take up **SB 488** for consideration at this time.

The motion prevailed by the following vote: Yeas 22, Nays 8, Present-not voting 1.

Yeas: Armbrister, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Fraser, Harris, Haywood, Jackson, Lindsay, Lucio, Madla, Nelson, Ogden, Shapiro, Shapleigh, Sibley, Staples, Van de Putte, Wentworth.

Nays: Barrientos, Ellis, Gallegos, Moncrief, Truan, West, Whitmire, Zaffirini.

Present-not voting: Mr. President.

The bill was read second time and was passed to engrossment by a viva voce vote.

**RECORD OF VOTES**

Senators Barrientos and Truan asked to be recorded as voting "Nay" on the passage of **SB 488** to engrossment.

**(Senator Bivins in Chair)**

**SENATE RULE 2.02 SUSPENDED  
(Restrictions on Admission)**

On motion of Senator Harris and by unanimous consent, Senate Rule 2.02 was suspended to grant floor privileges to a member of his staff and a Sunset Advisory Commission staff member during the deliberation of **CSHB 2912**.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2912 ON SECOND READING**

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**CSHB 2912**, Relating to the continuation and functions of the Texas Natural Resource Conservation Commission; providing penalties.

The bill was read second time.

Senator Harris offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2912** as follows:

(1) In SECTION 17.05(a) (Committee Printing page 49, lines 39-42), strike the sentence beginning "The use of compliance history".

(2) In SECTION 17.05(f)(2) (Committee Printing page 50, line 9), strike "and 382.056" and substitute "382.056, 401.110, and 401.112"

(3) In SECTION 17.05 (Committee Printing page 50, lines 10-33), strike Subsections (g)-(j) and substitute the following:

(g) For the purposes of consideration of compliance history in decisions by the Texas Natural Resource Conservation Commission relating to the issuance, amendment, modification, or renewal of a permit under the sections listed under Subsection (f) of this section, an application submitted before September 1, 2001, is governed by the law in effect on the date the application is submitted, and the former law is continued in effect for that purpose.

(h) The changes made by this Act in the consideration of compliance history in decisions by the Texas Natural Resource Conservation Commission relating to inspections and flexible permitting under Subchapter Q, Chapter 5, Water Code, as added by this Act apply, effective September 1, 2002, to an action taken by the Texas Natural Resource Conservation Commission that is subject to those sections.

(i) The changes made by this Act in the definition of compliance history apply to an action taken by the Texas Natural Resource Conservation Commission on or after February 1, 2002. An action taken by the Texas Natural Resource Conservation Commission before February 1, 2002, is governed by the law in effect on the date the action is taken, and the former law is continued in effect for that purpose.

(j) The changes made by this Act in the consideration of compliance history in decisions of the Texas Natural Resource Conservation Commission relating to the suspension or revocation of a permit or the imposition of a penalty in a matter under the jurisdiction of the commission apply only to a proceeding that is initiated or an action that is brought on or after September 1, 2002. A proceeding that is initiated or an action that is brought before September 1, 2002, is governed by the law in effect on the date the proceeding is initiated or action is brought, and the former law is continued in effect for that purpose.

(k) For the period between September 1, 2002, and September 1, 2005, the Texas Natural Resource Conservation Commission by rule may temporarily modify specific compliance history requirements to implement the regulatory structure being developed under Subchapter Q, Chapter 5, Water Code, as added by this Act. This section does not authorize the commission to modify existing statutory requirements relating to the use of compliance history in any enforcement proceeding.

The amendment was read and was adopted by a viva voce vote.

Senator Harris offered the following amendment to the bill:

### **Floor Amendment No. 2**

Amend **CSHB 2912** as follows:

(1) On page 17, line 16, add "to which this subchapter applies" before the period.

(2) On page 17, line 19, insert "an opportunity for" between "after" and "a".

(3) On page 17, line 21, strike "under the method for evaluating compliance history developed by the Commission under Section 5.753 and this section" and replace with "based on violations constituting a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations."

(4) On page 17, line 23, strike "In this subsection, "permit" has the meaning assigned by Section 7.001, Water Code."

The amendment was read and was adopted by a viva voce vote.

**Floor Amendment No. 3 was not offered.**

**Floor Amendment No. 4 was not offered.**

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 5**

Amend **CSHB 2912** (Senate committee printing) as follows:

(1) In SECTION 2.03 of the bill, in the recitation (page 11, line 45), strike "5.707" and substitute "5.708".

(2) In SECTION 2.03 of the bill, following proposed Section 5.707, Water Code (page 12, between lines 58 and 59), add the following:

Sec. 5.708. PERMIT FEE EXEMPTION FOR CERTAIN RESEARCH PROJECTS. (a) In this section:

(1) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(2) "State agency" has the meaning assigned by Section 572.002, Government Code.

(b) If a permit issued by the commission is required for a research project by an institution of higher education or a state agency, payment of a fee is not required for the permit.

The amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 6**

Amend **CSHB 2912** as follows:

(1) On page 18, strike lines 43 through 45 and insert the following:

~~[(f) A permit may satisfy a requirement to demonstrate need by showing need on a regional basis considering economic impacts.]~~

(2) On page 18, line 46, strike "(h) [~~(g)~~]" and substitute "(g)".

(3) On page 18, line 49, strike "(i) [~~(h)~~]" and substitute "(h)".

Floor Amendment No. 6 was read.

On motion of Senator Armbrister and by unanimous consent, Floor Amendment No. 6 was withdrawn.

**Floor Amendment No. 7 was not offered.**

Senator Haywood offered the following amendment to the bill:

**Floor Amendment No. 8**

Amend **CSHB 2912** in Section 4.06 of the bill, amended Subsection (b), Section 382.05186, Health and Safety Code (page 24, line 68, through page 25, line 17) by striking every occurrence of "30 percent" and substituting for each "20 percent".

The amendment was read and failed of adoption by the following vote: Yeas 10, Nays 20, Present-not voting 1.

Yeas: Armbrister, Bivins, Carona, Duncan, Fraser, Gallegos, Haywood, Ogden, Shapiro, Staples.

Nays: Barrientos, Bernsen, Brown, Cain, Ellis, Harris, Jackson, Lindsay, Lucio, Madla, Moncrief, Nelson, Shapleigh, Sibley, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Present-not voting: Mr. President.

### **SENATE RULE 2.02 SUSPENDED (Restrictions on Admission)**

On motion of Senator Truan and by unanimous consent, Senate Rule 2.02 was suspended to grant floor privileges to a member of his staff during the deliberation of **CSHB 2912**.

### **(President in Chair)**

Senator Barrientos offered the following amendment to the bill:

#### **Floor Amendment No. 9**

Amend **CSHB 2912** as follows:

- (1) On page 27, line 22, strike "4,000" and substitute "8,000".
- (2) On page 27, line 37, strike "4,000" and substitute "8,000".
- (3) On page 27, line 39, strike "4,000" and substitute "8,000".
- (4) On page 27, line 41, strike "4,000" and substitute "8,000".

The amendment was read.

On motion of Senator Barrientos and by unanimous consent, Floor Amendment No. 9 was temporarily withdrawn.

Senator Bernsen offered the following amendment to the bill:

#### **Floor Amendment No. 10**

Amend **CSHB 2912** by adding the following SECTION to Article 8 of the bill on page 30 between lines 26 and 27 and renumbering subsequent SECTIONS of the bill accordingly:

SECTION 8.02. Section 361.114, Health and Safety Code, is amended to read as follows:

Sec. 361.114. PROHIBITION OF DISPOSAL OF HAZARDOUS WASTE INTO CERTAIN GEOLOGICAL FORMATIONS. The commission by rule shall prohibit the storage, processing, or disposal of hazardous waste in a solution-mined salt dome cavern or a sulphur mine.

The amendment was read and was adopted by a viva voce vote.

### **RECORD OF VOTE**

Senator Fraser asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 10.

**Floor Amendment No. 11 was not offered.**

**Floor Amendment No. 12 was not offered.**

**Floor Amendment No. 13 was not offered.**

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 14**

Amend **CSHB 2912**, SECTION 8.03, which adds Section 361.120, Health and Safety Code, by amending subsection (c) on page 30, lines 65-69, and adding new subsection (e) after subsection (d) on page 31, lines 1-3, to read as follows:

(c) Except as provided in Subsections (d) and (e), the reopening of any such facility shall be considered a major amendment as such is defined by commission rules and shall subject the permittee to all of the procedural and substantive obligations imposed by the rules applicable to major amendments.

(d) This section shall not apply to any municipal solid waste landfill facility that has received an approved modification to its permit as of the effective date of this section.

(e) For any facility which is subject to a contract of sale as of the effective date of this section, the demonstration of compliance with applicable regulations and the authorization to reopen and accept waste shall be processed by the commission as a Class I permit modification subject only to the requirements for a public meeting and notice under the procedures established in Section 361.0791.

ARMBRISTER  
ZAFFIRINI

The amendment was read.

Senator Armbrister offered the following amendment to the amendment:

**Floor Amendment No. 14A**

Amend Floor Amendment No. 14 to **CSHB 2912** as follows:

Amend **CSHB 2912**, SECTION 8.03, which adds Section 361.120, Health and Safety Code, by amending subsection (c) on page 30, lines 65-69, and adding new subsection (e) after subsection (d) on page 31, lines 1-3, to read as follows:

(c) Except as provided in Subsections (d) and (e), the reopening of any such facility shall be considered a major amendment as such is defined by commission rules and shall subject the permittee to all of the procedural and substantive obligations imposed by the rules applicable to major amendments.

(d) This section shall not apply to any municipal solid waste landfill facility that has received an approved modification to its permit as of the effective date of this section.

(e) For any facility which is subject to a contract of sale as of January 1, 2001, the scope of the public hearing shall be limited to land use, as provided in Section 361.069.

ARMBRISTER  
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The amendment to the amendment was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 14 as amended, the amendment as amended was adopted by a viva voce vote.

Senator Barrientos offered the following amendment to the bill:

### Floor Amendment No. 15

Amend **CSHB 2912** as follows:

(1) On page 31, between lines 30-31, insert the following: "(3) "Responsible person" means the person with ultimate responsibility for the treatment or disposal of the Class B sludge at a land application unit. The responsible person is:

(A) the owner of the land application unit if the sludge being treated or disposed of was generated outside this state; or

(B) the person who generated the sludge if the sludge being treated or disposed of was generated in this state."

(2) On page 31, lines 31-38, strike proposed subsections 361.121(b) and 361.121(c) and substitute the following:

"(b) A person may not apply Class B sludge on a land application unit unless the responsible person has obtained a permit issued by the commission under this section:

(1) on or after September 1, 2001, if the land application unit begins operation on or after that date; or

(2) on or after September 1, 2003, if the land application unit begins operation before September 1, 2001.

(c) The notice and hearing provisions of Subchapter M, Chapter 5, Water Code, as added by Chapter 1350, Acts of the 76th Legislature, Regular Session, 1999, apply to an application under this section for a permit, a permit amendment, or a permit renewal."

(3) On page 32, lines 2-10, strike subsection (b), and substitute the following:

(b) For the purposes of administrative efficiency, the Texas Natural Resource Conservation Commission by rule may develop categories of persons required to obtain a permit under Section 361.119(b)(2), Health and Safety Code, as added by this Act, and may require certain categories of persons to obtain a permit earlier than the date prescribed by that section.

The amendment was read.

Senator Harris offered the following amendment to the amendment:

### Floor Amendment No. 15A

Amend Floor Amendment No. 15 to **CSHB 2912** as follows:

(1) On line 2, strike "treatment or disposal" and substitute "land application".

(2) On line 4 strike "treated or".

(3) On line 5 strike "disposed of" and substitute "land applied".

(4) On line 6 strike "generated" and substitute "is land applying".

(5) On line 6 strike "treated or".

(6) On line 7 strike "disposed of" and substitute "land applied".

(7) On line 10 between "A" and "person" insert "responsible".

(8) On line 11 between "permit" and "issued" insert "for that land application unit".

(9) On line 11 strike the colon at the end of the sentence.

(10) Strike lines 12 and 13.

(11) On line 14 strike "(2)".

(12) On lines 14 and 15 insert a period after "2003" and strike the rest of the sentence.

The amendment to the amendment was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 15 as amended, the amendment as amended was adopted by a viva voce vote.

Senator Brown offered the following amendment to the bill:

**Floor Amendment No. 16**

Amend **CSHB 2912** as follows:

(1) Amend **CSHB 2912** by inserting the following appropriately numbered new section in ARTICLE 8 of the substitute on page 32, between lines 38 and 39:

SECTION 8.\_\_\_\_\_. Section 361.206, Health and Safety Code, is amended by adding Subsection (h) to read as follows:

(h) Nothing in this section limits the authority of the commission, consistent with federal law, to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility.

(2) Amend **CSHB 2912** by inserting the following appropriately numbered new section in ARTICLE 8 of the substitute on page 32, between lines 38 and 39:

SECTION 8.\_\_\_\_\_. Section 7.031, Water Code, is amended to read as follows: Sec. 7.031. Corrective Action Relating to Hazardous Waste

(a) The commission shall require corrective action for a release of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility that is required to obtain a permit for the management of hazardous waste and whose permit is issued after November 8, 1984, regardless of when the waste is placed in the unit.

(b) The commission shall establish schedules for compliance for the corrective action if the corrective action cannot be completed before permit issuance and shall require assurances of financial responsibility for completing the corrective action.

(c) ~~If, before the amendment of a permit,~~ the commission determines that there is or has been a release of hazardous waste into the environment from a facility required to obtain a permit in accordance with an approved state program under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), the commission may:

(1) issue an order requiring corrective action or other response measures considered necessary to protect human health or the environment; or

(2) institute a civil action under Subchapter D.

(d) An order issued under this section:

(1) may include a suspension or revocation of authorization to operate;

(2) must state with reasonable specificity the nature of the required corrective action or other response measure; and

(3) must specify a time for compliance.

(e) If a person named in the order does not comply with the order, the commission may assess an administrative penalty or seek a civil penalty in accordance with this chapter.

(f) Nothing in this section limits the authority of the commission, consistent with federal law, to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility.

The amendment was read and was adopted by a viva voce vote.

Senator Sibley offered the following amendment to the bill:

**Floor Amendment No. 17**

Amend **CSHB 2912** as follows:

(1) Strike SECTION 10.01 of the bill (page 32, line 59 through page 33, line 20, committee printing) and substitute the following:

"SECTION 10.01. Section 26.001, Water Code, is amended by amending Subdivisions (10) and (13) to read as follows:

(10) "Agricultural waste" means waterborne liquid, gaseous, or solid substances that arise from the agricultural industry and agricultural activities, including without limitation agricultural animal feeding pens and lots, structures for housing and feeding agricultural animals, and processing facilities for agricultural products. The term:

(A) includes:

(i) tail water or runoff water from irrigation associated with an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; or

(ii) rainwater runoff from the confinement area of an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; and

(B) [~~"agricultural waste"~~] does not include tail water or runoff water from irrigation of rainwater runoff from other cultivated or uncultivated range land, pasture land, and farmland or rainwater runoff from an area of land located in a major sole source impairment zone, as defined by Section 26.502, that is not owned or controlled by an operator of an animal feeding operation or concentrated animal feeding operation on which agricultural waste is applied.

(13) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any water in the state. The term:

(A) includes:

(i) tail water or runoff water from irrigation associated with an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment area as defined by Section 26.502; or

(ii) rainwater runoff from the confinement area of an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; and

(B) [~~"pollutant"~~] does not include tail water or runoff water from irrigation or rainwater runoff from other cultivated or uncultivated range land, pastureland, and farmland or rainwater runoff from an area of land located in a major sole source impairment zone, as defined by Section 26.502, that is not owned or controlled by an operator of an animal feeding operation or concentrated animal feeding operation on which agricultural waste is applied."

(2) In Sec. 26.502, Chapter 26, Water Code, in SECTION 10.02 of the bill (page 33, line 35, committee printing), insert the following between the words "only" and "in":



"to a feeding operation confining cattle that have been or may be used for dairy purposes, or otherwise associated with a dairy, including cows, calves, and bulls."

(3) In Sec. 26.503, Chapter 26, Water Code, in SECTION 10.02 of the bill (page 33, line 69, committee printing), insert "operated by an owner or" between the words "or" and "controlled by".

(4) In Sec. 26.503, Chapter 26, Water Code, in SECTION 10.02 of the bill (page 34, lines 4-5, committee printing), strike ", including delivery to a third party for use or disposal".

The amendment was read and was adopted by a viva voce vote.

Senator Carona offered the following amendment to the bill:

### **Floor Amendment No. 18**

Amend **CSHB 2912** on page 75, line 1, Article 8, add a new Section 8.01 and 8.02 of the bill to read as follows:

SECTION 8.01. Subchapter B, Chapter 361, Health and Safety Code, is amended by changing Section 361.013(a) to read as follows:

(a) Except as provided by Subsections (e) through (i), the commission shall charge a fee on all solid waste that is disposed of within the state. The fee is ~~\$1.25~~ 63 cents per ton received for disposal at a municipal solid waste landfill if the solid waste is measured by weight. If the solid waste is measured by volume, the fee for compacted solid waste is ~~40~~ 20 cents per cubic yard or, for uncompacted solid waste, ~~25~~ 13 cents per cubic yard received for disposal at a municipal solid waste landfill. The commission shall set the fee for sludge or similar waste applied to the land for beneficial use on a dry weight basis and for solid waste received at an incinerator or a shredding and composting facility at half the fee set for solid waste received for disposal at a landfill. The commission may charge comparable fees for other means of solid waste disposal that are used.

SECTION 8.02. Subchapter B, Chapter 361, Health and Safety Code, is amended by changing Section 361.014 to read as follows:

(a) Revenue received by the commission under Section 361.013 shall be deposited in the state treasury to the credit of the commission. ~~Half of the~~ The revenue is dedicated to the commission's municipal solid waste permitting and enforcement programs and related support activities and to pay for activities that will enhance the state's solid waste management program, including:

(1) provision of funds for the municipal solid waste management planning fund and the municipal solid waste resource recovery applied research and technical assistance fund established by the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363);

(2) conduct of demonstration projects and studies to help local governments of various populations and the private sector to convert to accounting systems and set rates that reflect the full costs of providing waste management services and are proportionate to the amount of waste generated;

(3) provision of technical assistance to local governments concerning solid waste management;

(4) establishment of a solid waste resource center in the commission and an office of waste minimization and recycling;

(5) provision of supplemental funding to local governments for the enforcement of this chapter, the Texas Litter Abatement Act (Chapter 365), and Chapters 391 and 683, Transportation Code;

(6) conduct of a statewide public awareness program concerning solid waste management;

(7) provision of supplemental funds for other state agencies with responsibilities concerning solid waste management, recycling, and other initiatives with the purpose of diverting recyclable waste from landfills;

(8) conduct of research to promote the development and stimulation of markets for recycled waste products;

(9) creation of a state municipal solid waste superfund for:

(A) the cleanup of unauthorized tire dumps and solid waste dumps for which a responsible party cannot be located or is not immediately financially able to provide the cleanup; and

(B) the cleanup or proper closure of abandoned or contaminated municipal solid waste sites for which a responsible party is not immediately financially able to provide the cleanup;

(10) provision of funds to mitigate the economic and environmental impacts of lead-acid battery recycling activities on local governments; and

(11) provision of funds for the conduct of research by a public or private entity to assist the state in developing new technologies and methods to reduce the amount of municipal solid waste disposed in landfills.

~~(b) Half the revenue is dedicated to local and regional solid waste projects consistent with regional plans approved by the commission in accordance with this chapter and to update and maintain those plans. Those revenues shall be allocated to municipal solid waste geographic planning regions for use by local governments and regional planning commissions according to a formula established by the commission that takes into account population, area, solid waste fee generation, and public health needs. Each planning region shall issue a biennial report to the legislature detailing how the revenue is spent. A project or service funded under this subsection must promote cooperation between public and private entities and may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services.~~

~~(e)~~ (b) Revenue derived from fees charged under Section 361.013(c) to a transporter of whole used or scrap tires or shredded tire pieces shall be deposited to the credit of the waste tire recycling account.

~~(d)~~ (c) Revenues allocated to the commission for the purposes authorized by Subsection (a) shall be deposited to the credit of the waste management account. ~~Revenues allocated to local and regional solid waste projects shall be deposited to the credit of an account in the general revenue fund known as the municipal solid waste disposal account.~~

The amendment was read and was adopted by a viva voce vote.

## RECORD OF VOTES

Senators Bivins and Haywood asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 18.

Senator Truan offered the following amendment to the bill:

**Floor Amendment No. 19**

Amend **CSHB 2912**, by adding new SECTION 1.22, 1.23, and 1.24 to read as follows:

SECTION 1.22. Section 361.0231(a), Health and Safety Code, is amended to read as follows:

(a) To protect the public health and environment~~[-encourage economic development,]~~ and assure the continuation of the federal funding for abandoned facility response actions, it is the state public policy that adequate capacity should exist for the proper management of industrial and hazardous waste generated in this state.

SECTION 1.23. Section 26.003, Water Code, is amended to read as follows:

Sec. 26.003. POLICY OF THIS SUBCHAPTER. It is the policy of this state and the purpose of this subchapter to maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries~~[-and the economic development of the state];~~ to encourage and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.

SECTION 1.24. Section 27.003, Water Code, is amended to read as follows:

Sec. 27.003. POLICY AND PURPOSE. It is the policy of this state and the purpose of this chapter to maintain the quality of fresh water in the state to the extent consistent with the public health and welfare and~~[-]~~ the operation of existing industries, ~~[and the economic development of the state,]~~ to prevent underground injection that may pollute fresh water, and to require the use of all reasonable methods to implement this policy.

The amendment was read.

On motion of Senator Harris, Floor Amendment No. 19 was tabled by the following vote: Yeas 21, Nays 6, Present-not voting 1.

Yeas: Armbrister, Bernsen, Bivins, Brown, Carona, Duncan, Fraser, Gallegos, Harris, Haywood, Jackson, Lindsay, Lucio, Madla, Moncrief, Nelson, Ogden, Shapiro, Sibley, Staples, Whitmire.

Nays: Barrientos, Shapleigh, Truan, Van de Putte, Wentworth, Zaffirini.

Present-not voting: Mr. President.

Absent: Cain, Ellis, West.

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 20**

Amend **CSHB 2912** by adding the following:

Sec. 9.05.

Amend Section 1.28, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993 as follows:

(b) The authority may issue revenue bonds to finance the purchase of land or the purchase, construction, or installation of facilities or equipment. ~~The authority may not allow for any~~ A person to may construct, acquire, or own facilities for transporting

groundwater out of Uvalde County or Medina County, only if the facility is financed by private, municipal or other governmental funds and the water transported has been withdrawn from the Edwards Aquifer subject to a withdrawal permit issued by the authority or Chapter 36 District.

(c) Prior to the construction of facilities for transporting groundwater out of Uvalde or Medina County, the Commission must conduct a study, including public hearings in Uvalde and Medina Counties regarding the feasibility and practicality of such a facility.

The amendment was read and was adopted by a viva voce vote.

### RECORD OF VOTE

Senator Zaffirini asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 20.

Senator Shapleigh offered the following amendment to the bill:

#### Floor Amendment No. 21

Amend **CSHB 2912** by adding the following appropriately numbered SECTION to Article 15 of the bill and renumbering subsequent SECTIONS of Article 15 accordingly:

SECTION \_\_\_\_\_. Subchapter C, Chapter 13, Water Code, is amended by adding Section 13.0415 to read as follows:

Sec. 13.0415. REGULATION OF CERTAIN SALES OF WATER TO BE TRANSPORTED BY PIPELINE. (a) This section applies to the sale of raw or potable water, whether surface water or groundwater, by an individual or business entity if the water is to be transported by pipeline:

(1) at least 50 miles; or

(2) from one river basin in this state to another river basin in this state.

(b) The commission has all authority and power of the state to ensure that persons who supply water under this section comply with this section. For that purpose and without limitation of other powers, the commission may, where it finds a monopoly exists:

(1) fix and regulate the rates of water suppliers under this section; and

(2) adopt rules for determining the classification of customers and services and for determining the applicability of rates.

(c) The commission shall ensure that the rates for water sold under this section are just and reasonable.

The amendment was read.

### POINT OF ORDER

Senator Brown raised a point of order that Floor Amendment No. 21 was not discussed in committee and therefore could not be offered on the floor.

### POINT OF ORDER RULING

The President ruled that the point of order was well-taken and sustained.

Senator Brown offered the following amendment to the bill:

**Floor Amendment No. 22**

Amend **CSHB 2912** by inserting the appropriately numbered Sections, to read as follows:

SECTION \_\_\_\_\_. Section 11.002, Water Code, is amended by adding Subdivision (11) to read as follows:

(11) "River basin" means a river or coastal basin designated by the board as a river basin under Section 16.051. The term does not include waters of the bays or arms of the Gulf of Mexico.

SECTION \_\_\_\_\_. Subsection (p), Section 11.085, Water Code, is amended to read as follows:

~~(p) [For the purposes of this section, a basin is designated as provided in accordance with Section 16.051 of this code.]~~ A river basin may not be redesignated in order to allow a transfer or diversion of water otherwise in violation of this section.

SECTION \_\_\_\_\_. Subsection (b), Section 15.102, Water Code, is amended to read as follows:

(b) The loan fund may also be used by the board to provide grants for:

(1) projects that include supplying water and wastewater services in economically distressed areas, including projects involving retail distribution of those services; and

(2) desalination, brush control, weather modification, regionalization, and projects providing regional water quality enhancement services as defined by board rule, including regional conveyance systems.

SECTION \_\_\_\_\_. Subsections (4), (5) and (6), Section 15.434, Water Code, are amended to read as follows:

(4) grants made to groundwater [underground water] conservation districts and political subdivisions for the purchase of equipment under programs established by Subchapter H of this chapter;

(5) research in water utilization and conservation including artificial recharge and secondary recovery of groundwater [underground water];

(6) desalination [desalimization];

SECTION \_\_\_\_\_. Section 11.32, Tax Code, is amended to read as follows:

Sec. 11.32. CERTAIN WATER CONSERVATION INITIATIVES. The governing body of a taxing unit by official action of the governing body adopted in the manner required by law for official actions may exempt from taxation part or all of the assessed value of property on which approved water conservation initiatives, desalination projects, or brush control initiatives have been implemented. For purposes of this section, approved water conservation, desalination, and brush control initiatives shall be designated pursuant to an ordinance or other law adopted by the governing unit.

SECTION \_\_\_\_\_. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.355 to read as follows:

Sec. 151.355. WATER RELATED EXEMPTIONS. The following are exempted from taxes imposed by this chapter:

(1) rainwater harvesting equipment or supplies, water recycling and reuse equipment or supplies, or other equipment, services, or supplies used to reduce or eliminate water use;

(2) equipment, services, or supplies used for desalination of surface water or groundwater;

(3) equipment, services, or supplies used for brush control designed to enhance the availability of water;

(4) equipment, services, or supplies used for precipitation enhancement;

(5) equipment, services, or supplies used to construct or operate a water or wastewater system certified by the Texas Natural Resource Conservation Commission as a regional system; and

(6) equipment, services, or supplies used to construct or operate a water supply or wastewater system by a private entity as a public-private partnership, as certified by the political subdivision that is a party to the project.

The amendment was read.

Senator Bernsen offered the following amendment to the amendment:

#### **Floor Amendment No. 22A**

Amend Floor Amendment No. 22 to **CSHB 2912** on page 1, line 6, after "waters" strike "of" and insert "originating in".

The amendment to the amendment was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 22 as amended, the amendment as amended was adopted by a viva voce vote.

### **SENATE RULE 4.01 SUSPENDED (Decorum and Debate of Members of the Senate)**

Senator Harris asked unanimous consent to suspend Senate Rule 4.01 to allow him to be seated at his desk, due to an injury he had sustained, for the remainder of the deliberation of **CSHB 2912**.

The request was granted without objection.

Senator Brown offered the following amendment to the bill:

#### **Floor Amendment No. 23**

Amend **CSHB 2912** by inserting the following:

Subtitle A, Title 2, Water Code, is amended by adding Chapter 9 to read as follows:

#### CHAPTER 9. TEXAS WATER ADVISORY COUNCIL

Sec. 9.001. DEFINITION. In this chapter:

(1) "Authority" means an entity listed in Section.

(2) "Board" means the governing body of an authority.

(3) "Commission" means the Texas Natural Resource Conservation Commission.

(4) "Council" means the Texas Water Advisory Council.

Sec. 9.002. CREATION AND MEMBERSHIP. (a) The council is composed of 11 members as follows:

(1) the chairman, or a board member designated by the chairman, of the Texas Water Development Board;

(2) the chairman, or a commissioner designated by the chairman, of the commission;

(3) the chairman, or a commissioner designated by the chairman, of the Parks and Wildlife Commission;

(4) the commissioner of agriculture;

(5) the Commissioner of the General Land Office;

(6) two members of the house of representatives appointed by the speaker of the house of representatives;

(7) one member of the senate appointed by the lieutenant governor; and

(8) three members of the general public appointed by the governor.

(b) Council members may not delegate council participation or council duties to staff.

Sec. 9.003. TERMS. (a) Except for the commissioner of agriculture, council members who are officials of state agencies serve terms as determined by the chairman of each agency.

(b) Council members who are members of the general public serve staggered six-year terms with the term of one member expiring August 31 of each odd-numbered year.

(c) Council members may be reappointed to serve additional terms.

(d) A vacancy on the council shall be filled by appointment by the original appointing authority for the unexpired term.

Sec. 9.004. OFFICERS OF THE COUNCIL. (a) The governor shall appoint a council member as the chair of the council for a two-year term expiring May 31 of each even-numbered year.

(b) The council shall have a secretary of the council who shall serve at the pleasure of the council and be accountable only to the council.

Sec. 9.005. COUNCIL STAFF. On request by the council, the commission and the Texas Water Development Board shall provide any staff other than the secretary of the council necessary to assist the council in the performance of its duties.

Sec. 9.006. MEETINGS. (a) The council shall meet at least once in each calendar quarter. Six members shall constitute a quorum sufficient to conduct meetings and the business of the council.

(b) The council is subject to Chapters 551 and 2001, Government Code.

Sec. 9.007. COMPENSATION OF MEMBERS. (a) Members of the council shall serve without compensation but may be reimbursed by legislative appropriation for actual and necessary expenses related to the performance of council duties.

(b) Reimbursements under Subsection (a) shall be subject to the approval of the chair.

Sec. 9.008. POWERS AND DUTIES OF COUNCIL. (a) The council shall:

(1) heighten the level of dialogue on significant water policy issues and, in an advisory role only, strive to provide focus and guidance on state water policy initiatives including:

(A) promoting flexibility and incentives for water desalination, brush control, regionalization, weather modification projects, and public-private partnerships relating to water projects;

(B) promoting adequate financing for surface water and groundwater projects;

(C) development of water conservation and drought management projects;

(D) implementation of approved regional and state water plans;

(E) encouraging commonality of technical data and information such as joint agency studies, freshwater inflow recommendations, surface water and groundwater availability models, and instream flow recommendations developed by the Parks and Wildlife Department, the commission, and the Texas Water Development Board; and

(F) encouraging the use of supplemental environmental projects for water infrastructure needs and enhancing the aquatic environment and habitat in enforcement proceedings at a state agency or political subdivision

(2) encourage the enhancement and coordination of state, interstate, and international efforts to improve environmental quality and living conditions along the Texas-Mexico border;

(3) coordinate a unified state position on federal and international water issues; and

(4) advise the Texas Water Development Board on developing criteria based on need for prioritizing the funding of projects in the state water plan.

(b) The council may not:

(1) promulgate rules;

(2) regulate water use, water quality, or any other aspect of water resource management;

(3) plan or construct water resource projects, or have such projects planned or constructed;

(4) grant or loan any funds for the construction of water resource projects;

(5) establish water resource management standards or otherwise usurp the authority of or infringe upon the duties, responsibilities, or powers of local, regional, or state water management entities, including groundwater districts, river authorities and compacts, regional water planning groups, or member agencies of the council; or

(6) consider or discuss any specific permit or project or recommendation for a project.

Sec. 9.009. REPORT. Not later than December 1 of each even-numbered year, the council shall submit a report to governor, lieutenant governor, and speaker of the house of representatives and to the senate and house standing committees with primary responsibility over water resource management and financing. The report shall include findings of the council made in the periodic reviews of authorities during the preceding two-year period and any other findings and recommendations the council considers necessary.

Sec. 9.010. REVIEW OF AUTHORITIES. (a) On a five-year cycle, the council shall review authorities based on the administrative policies provided by Section 9.012 and performance standards described in Section 9.011. The reviews shall be conducted of groups described in Subsection (b), with group 1 being reviewed at the council's first quarterly meeting of the five-year period and group 2 being reviewed at the council's third quarterly meeting of the period. The council shall continue in numerical order to review one group at every other quarterly meeting until all ten groups have been reviewed and then shall recommence the cycle.



(b) Authorities shall be reviewed under Subsection (a) in the following groups:

(1) in group 1, Northeast Texas Municipal Water District, Titus County Fresh Water Supply District No. 1, and Franklin County Water District;

(2) in group 2, Angelina and Neches River Authority, Lower Neches Valley Authority, Sabine River Authority, and Upper Neches River Municipal Water Authority;

(3) in group 3, Red River Authority of Texas, Sulphur River Municipal Water District, and Sulphur River Basin Authority;

(4) in group 4, San Jacinto River Authority, Gulf Coast Water Authority, and North Harris County Regional Water Authority;

(5) in group 5, North Texas Municipal Water District, Tarrant Regional Water District, Trinity River Authority of Texas, and Dallas County Utility and Reclamation District;

(6) in group 6, Brazos River Authority, West Central Texas Municipal Water District, and North Central Texas Municipal Water Authority;

(7) in group 7, Guadalupe-Blanco River Authority, Lavaca-Navidad River Authority, Lower Colorado River Authority, and Upper Guadalupe River Authority;

(8) in group 8, Nueces River Authority, San Antonio River Authority, and Bexar-Medina-Atascosa Counties Water Control and Improvement District No. 1;

(9) in group 9, Colorado River Municipal Water District, Central Colorado River Authority, and Upper Colorado River Authority; and

(10) in group 10, Canadian River Municipal Water Authority, Mackenzie Municipal Water Authority, and White River Municipal Water District.

(c) The council may not review an authority under this section more than once every five years. The council may, however, request an authority that has been reviewed to provide follow-up information on any specific item or issue raised during the initial review.

(d) The council, on request by an authority, may modify the review schedule in order to have the flexibility in scheduling the review, if needed, to be more responsive to particular circumstances, changing conditions, or time-sensitive conflicts.

Sec. 9.011. PERFORMANCE STANDARDS. (a) Before its five-year review under Section 9.010, the authority shall report to the council a self-assessment of its performance associated with the following:

(1) how the authority is achieving its stated mission and goals, including an identification of any barriers that exist in achieving the mission and goals;

(2) how the authority is providing service to its customers, including mechanisms the authority provides to encourage input from the public and its customers;

(3) how the authority is addressing issues raised by its most recent management audit, including its administrative policies; and

(4) the authority's role in the regional water planning process.

(b) The authority's report to the council under this section shall include recommendations related to:

(1) any interregional issues the authority has identified as problematic and any potential solutions to those issues; and

(2) solutions to any barriers the authority determines are interfering with the successful implementation of the approved regional water plan or state water plan.

Sec. 9.012. ADMINISTRATIVE POLICIES FOR AUTHORITIES. The commission shall expand the applicability of its rules under 30 T.A.C. Chapter 292 to include all the authorities subject to this title. The commission shall provide the council with copies of the most recent information provided by each authority in accordance with its administrative rules.

Sec. 9.013. GIFTS AND GRANTS. The council may accept gifts and grants from any source to carry out the purposes of this chapter. The use of gifts and grants other than legislative appropriations is subject only to limitations contained in the gift or grant.

Sec. 9.014. FUNDING. (a) The interagency water policy account is a special account in the general revenue fund.

(b) The interagency water policy account consists of legislative appropriations, gifts and grants received under Section 9.013, and other money required by law to be deposited in the account.

(c) Funds in the interagency water policy account may be used only as provided by this chapter.

Sec. 9.015. CONTINUING RIGHT OF SUPERVISION. Nothing in this chapter shall affect the continuing right of supervision over authorities by the commission as provided by Section 12.081.

Sec. 9.016. PUBLIC PARTICIPATION. The council shall encourage public input to the council in the exercise of its powers and duties as specified in Section 9.008, its preparation of the report described in Section 9.009, and its review of authorities under Sections 9.010 and 9.011.

Sec. 9.017. APPLICATION OF OTHER LAWS. Nothing in this chapter is intended to extend provisions of the Government Code, the Local Government Code, or other law to a river authority or water district to which such provisions do not otherwise apply.

The amendment was read and was adopted by a viva voce vote.

Senator Brown offered the following amendment to the bill:

#### **Floor Amendment No. 24**

Amend **CSHB 2912** as follows:

Add new Sec. 361.120 Health and Safety Code to read:

The commission may not issue a permit for a Type IV landfill if:

1. the applicant, or a company owned in whole or in part by the applicant, within the twenty-four months prior to the date of application has owned or operated an unauthorized material recovery facility within the county in which the facility is proposed to be located, and as a result of which a notice of violation has been issued; and

2. the proposed site is located within 100 feet of a canal that is used as a public drinking water source or for irrigation of crops used for human or animal consumption.; and

3. the proposed site is located in a county with a population of more than 225,000 that is located adjacent to the Gulf of Mexico.

4. prior to final consideration of the application commission, the commissioners of the county in which the facility is located have adopted a resolution recommending denial of the application.

The amendment was read and was adopted by a viva voce vote.

**Floor Amendment No. 25 was not offered.**

Senator West offered the following amendment to the bill:

**Floor Amendment No. 25A**

Amend **CSHB 2912** by adding the following sections, numbered appropriately;  
SECTION \_\_\_\_\_. Section 5.013, Water Code, is amended by adding Subsection (c) to read as follows:

(c) This section allocates among various state agencies statutory authority delegated by other laws. This section does not delegate legislative authority.

SECTION \_\_\_\_\_. Section 5.103, Water Code, is amended by adding Subsection (d) to read as follows:

(d) The commission shall include as a part of each rule the commission adopts, and each proposed rule for adoption after the effective date of this Act, a citation to the statute that grants the specific regulatory authority under which the rule is justified and a citation of the specific regulatory authority that will be exercised. If no specific statutory authority exists and the agency is depending on this Section, citation of this Section, or Section 5.102 or 5.013 is sufficient. A rule adopted in violation of this subsection is void.

The amendment was read and was adopted by a viva voce vote.

**Floor Amendment No. 26 was not offered.**

Senator Bernsen offered the following amendment to the bill:

**Floor Amendment No. 26A**

Amend proposed **CSHB 2912** by striking Sections 4.04-4.10 of the bill (Committee Printing, page 21, line 52, through page 27, line 43) and substituting the following sections, numbered appropriately:

SECTION \_\_\_\_\_. Sections 382.051(a) and (b), 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;

(2) to operate an existing facility affected by Section 382.0518(g) [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 for numerous similar sources subject to Section 382.054;

(3) a standard permit for similar facilities;

(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) an existing facility permit under Section 382.05183;
- (8) a small business stationary source permit under Section 382.05184;
- (9) an electric generating facility permit under Section 382.05185 of this code and Section 39.264, Utilities Code;
- (10) a pipeline facilities permit under Section 382.05186; or
- (11) other permits as necessary.

SECTION \_\_\_\_\_. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Sections 382.05181-382.05186 to read as follows:

Sec. 382.05181. PERMIT REQUIRED. (a) Any facility affected by Section 382.0518(g) that does not have an application pending for a permit under this chapter, other than a permit required under Section 382.054, and that has not submitted a notice of shutdown under Section 382.05182, may not emit air contaminants on or after:

(1) September 1, 2003, if the facility is located in the East Texas region or the El Paso region; or

(2) September 1, 2004, if the facility is located in the West Texas region.

(b) Any facility affected by Section 382.0518(g) that has obtained a permit under this chapter, other than a permit under Section 382.054, and has not fully complied with the conditions of the permit pertaining to the installation of emissions controls or reductions in emissions of air contaminants, may not emit air contaminants on or after:

(1) March 1, 2007, if the facility is located in the East Texas region or the El Paso region; or

(2) March 1, 2008, if the facility is located in the West Texas region.

(c) The East Texas region:

(1) contains all counties traversed by or east of Interstate Highway 35 north of San Antonio or traversed by or east of Interstate Highway 37 south of San Antonio; and

(2) includes Bexar, Bosque, Coryell, Hood, Parker, Somervell, and Wise counties.

(d) The El Paso region includes all of El Paso County.

(e) The West Texas region includes all counties not contained in the East Texas region or the El Paso region.

(f) The commission promptly shall review each application for a permit under this chapter for a facility affected by Section 382.0518(g). If the commission finds that necessary information is omitted from the application, that the application contains incorrect information, or that more information is necessary to complete the processing of the application, the commission shall issue a notice of deficiency and order the information to be provided not later than the 60th day after the date the notice is issued. If the information is not provided to the commission on or before that date, the commission shall dismiss the application.

(g) The commission shall take final action on an application for a permit under this chapter for a facility affected by Section 382.0518(g) before the first anniversary of the date on which the commission receives an administratively complete application.

(h) An owner or operator of a facility affected by Section 382.0518(g) that does not obtain a permit within the 12-month period may petition the commission for an extension of the time period for compliance specified by Subsection (b). The commission may grant not more than one extension for a facility, for an additional period not to exceed 12 months, if the commission finds good cause for the extension.

(i) A permit application under this chapter for a facility affected by Section 382.0518(g) is subject to the notice and hearing requirements as provided by Section 382.056.

(j) Chapter 2001, Government Code, does not apply to a facility affected by Section 382.0518(g) that has received a permit under this chapter, or has an application pending for a permit under this chapter, the conditions of which require total emissions reductions from that facility of at least 40 percent below 1997 levels as reported to the commission.

(k) This section does not apply to a facility eligible for a permit under Section 382.05184.

Sec. 382.05182. NOTICE OF SHUTDOWN. (a) Any notice submitted in compliance with this section must be filed with the commission by the dates in Section 382.05181(a).

(b) A notice under this section shall include:

(1) the date the facility intends to cease operating;

(2) an inventory of the type and amount of emissions that will be eliminated when the facility ceases to operate; and

(3) any other necessary and relevant information the commission by rule deems appropriate.

Sec. 382.05183. EXISTING FACILITY PERMIT. (a) The owner or operator of a facility affected by Section 382.0518(g) may apply for a permit to operate the facility under this section.

(b) The commission shall grant a permit under this section if, from the information available to the commission, the commission finds that the facility will use the more stringent of:

(1) a control method at least as beneficial as that described by Section 382.003(9)(E)(ii), considering the age and the remaining useful life of the facility; or

(2) a control technology that the commission finds is demonstrated to be generally achievable for facilities in the same area that are facilities of the same type and 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 modifying.

(e) The commission may adopt rules as necessary to implement and administer this section.

Sec. 382.05184. SMALL BUSINESS STATIONARY SOURCE PERMIT. (a) Facilities affected by Section 382.0518(g) that are located at a small business stationary source, as defined by Section 382.0365(h), and are not required by commission rule to report to the commission under Section 382.014 may apply for a permit under this section before September 1, 2004.

(b) Facilities affected by Section 382.0518(g) that are located at a small business stationary source that does not have an application pending for a permit under this chapter, other than a permit required under Section 382.054, and that has not submitted

a notice of shutdown under Section 382.05182, may not emit air contaminants on or after March 1, 2008.

(c) The commission shall grant a permit under this section if, from the information available to the commission, the commission finds no indication that the emissions from the facility will contravene the intent of this chapter, including protection of the public's health and physical property.

(d) If the commission finds that the emissions from the facility will not comply with Subsection (c), the commission may not grant the permit under this section.

(e) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(f) The commission may adopt rules as necessary to implement and administer this section.

Sec. 382.05185. ELECTRIC GENERATING FACILITY PERMIT. (a) An electric generating facility is considered permitted under this section with respect to all air contaminants if the facility is:

(1) a natural-gas-fired electric generating facility that has applied for or obtained a permit under Section 39.264, Utilities Code; or

(2) an electric generating facility exempted from permitting under Section 39.264(d), Utilities Code.

(b) A coal-fired electric generating facility that is required to obtain a permit under Section 39.264, Utilities Code:

(1) shall be considered permitted under this section with respect to nitrogen oxides, sulphur dioxide, and, as provided by commission rules, for opacity, if the facility has applied for or obtained a permit under Section 39.264, Utilities Code; and

(2) is not considered permitted for air contaminants not described by Subsection (b)(1).

(c) The commission shall issue a permit for a facility subject to Subsection (b) for air contaminants not covered by Subsection (b)(1) if the commission finds that the emissions from the facility will not contravene the intent of this chapter, including protection of the public's health and physical property. On the applicant's request, the commission shall include a permit application under this subsection with the applicant's pending permit application under Section 39.264, Utilities Code.

(d) The owner or operator of an electric generating facility with a permit or an application pending under Section 39.264, Utilities Code, may apply for a permit under this section before September 1, 2002, for a facility located at the same site if the facility not permitted or without a pending application under Section 39.264, Utilities Code, is:

(1) a generator that does not generate electric energy for compensation and is used not more than 10 percent of the normal annual operating schedule; or

(2) an auxiliary fossil-fuel-fired combustion facility that does not generate electric energy and is not a major stationary source or major emitting facility as defined by Section 382.003(7)(F).

(e) Emissions from facilities permitted under Subsection (d) shall be included in the emission allowance trading program established under Section 39.264, Utilities Code. The commission may not issue new allowances based on a permit issued under this section.

(f) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(g) The commission may adopt rules as necessary to implement and administer this section.

(h) A permit application under this section is subject to notice and hearing requirements as provided by Section 382.05191.

(i) The commission shall adopt rules regarding acceptable fuel oil grades for use in natural-gas-fired electric generating facilities requiring that the amount and grade of fuel oil used may not increase emissions above allowable limits.

(j) In this section, a natural-gas-fired electric generating facility is an electric generating facility capable of burning natural gas or a fuel oil of a grade approved by commission rule.

Sec. 382.05186. PIPELINE FACILITIES PERMITS. (a) This section applies only to reciprocating internal combustion engines that are part of processing, treating, compression, or pumping facilities affected by Section 382.0518(g) connected to or part of a gathering or transmission pipeline.

(b) The commission by rule shall:

(1) provide for the issuance of a single permit for all facilities connected to or part of a gathering or transmission pipeline;

(2) provide for a means for mandatory emissions reductions for facilities permitted under this section to be achieved:

(A) at one source; or

(B) by averaging reductions among more than one source connected to or part of a gathering or transmission pipeline; and

(3) allow an owner or operator to apply for separate authorizations under this section for discreet and separate facilities connected to or part of a gathering or transmission pipeline.

(c) If the mandatory emissions reductions under this section are to be achieved by averaging reductions among more than one source connected to or part of a gathering or transmission pipeline, the average may not include emissions reductions achieved in order to comply with other state or federal law.

(d) If the mandatory emissions reductions under this section are to be achieved at one source, the reduction may include emissions reductions achieved in order to comply with other state or federal law.

(e) The commission shall grant a permit under this section if, from information available to the commission, the commission finds that the conditions of the permit will require at least a 50 percent reduction of hourly emissions rates of nitrogen oxides, expressed in terms of grams per brake horsepower-hour, if the facility is located in the East Texas region or El Paso region established by Section 382.05181.

(f) The commission may not grant a permit under this section if, from information available to the commission, it finds that the emissions from the facility will contravene the intent of this chapter, including protection of the public's health and physical property.

(g) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(h) The commission may adopt rules as necessary to implement and administer this section.

SECTION \_\_\_\_\_. Section 382.05191, Health and Safety Code, is amended to read as follows:

Sec. 382.05191. [~~VOLUNTARY~~] EMISSIONS REDUCTION PERMITS [~~PERMIT~~]: NOTICE AND HEARING. (a) An applicant for a permit under Section 382.05183, 382.05185, 382.05186, or 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(h) [~~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 382.05183, 382.05185, 382.05186, or 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 under Section 382.05183, 382.05185, or 382.05186 may move for rehearing and is entitled to judicial review under Section 382.032.

SECTION \_\_\_\_\_. Section 382.05192, Health and Safety Code, is amended to read as follows:

Sec. 382.05192. REVIEW AND RENEWAL OF [~~VOLUNTARY~~] EMISSIONS REDUCTION AND MULTIPLE PLANT PERMITS. Review and renewal of a permit issued under Section 382.05183, 382.05185, 382.05186, 382.0519, or 382.05194 shall be conducted in accordance with Section 382.055.

The amendment was read.

Senator Lucio offered the following amendment to the amendment:

#### **Floor Amendment No. 26B**

Amend Floor Amendment No. 26A to **CSHB 2912** as follows:

(1) On page 2, in both lines 14 and 22, insert "or other authorization" after the word "permit".

(2) On page 8, strike subsection (i), and renumber original subsection (j) as subsection (i), and amend new subsection (i) to read as follows:

(i) In this section, a natural-gas-fired electric generating facility is an electric generating facility ~~capable of burning~~ designed to burn natural gas or a fuel oil ~~of a grade approved by commission rule~~. A natural gas-fired electric generating facility may burn fuel oil, provided that the emissions that occur from the facility when it is burning fuel oil will not exceed any applicable emissions limit in state or federal law.

The amendment to the amendment was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 26A as amended, the amendment as amended was adopted by the following vote: Yeas 22, Nays 7, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bernsen, Brown, Cain, Ellis, Gallegos, Harris, Jackson, Lindsay, Lucio, Moncrief, Nelson, Shapiro, Shapleigh, Sibley, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Bivins, Duncan, Fraser, Haywood, Madla, Ogden, Staples.

Present-not voting: Mr. President.

Absent: Carona.



Senator Barrientos offered the following amendment to the bill:

**Floor Amendment No. 27**

Amend **CSHB 2912** by inserting the following appropriately numbered SECTION and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 361.534, Health and Safety Code, is amended to read as follows:

Sec. 361.534. PERMIT HEARING. (a) The commission shall set a hearing on ~~[to be held not later than the 30th day after the date that the commission receives]~~ an application under this subchapter.

(b) ~~The applicant [commission by mail shall notify the applicant of the date, time, and place of the hearing not later than the 15th day before the date of the hearing. The commission]~~ shall publish notice of the hearing in a newspaper that is generally circulated in each county in which the property proposed for development is located. The published notice must appear at least once a week for the two weeks before the date of the hearing.

On motion of Senator Barrientos and by unanimous consent, Floor Amendment No. 27 was withdrawn.

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 28**

Amend **CSHB 2912** by striking Article 6 of the bill and substituting the following Article 6:

ARTICLE 6. CERTIFICATION OF  
WATER TREATMENT SPECIALISTS

SECTION 6.01. Section 3A, The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes), is transferred to Chapter 341, Health and Safety Code, redesignated as Subchapter G, Chapter 341, and amended to read as follows:

SUBCHAPTER G. CERTIFICATION OF  
WATER TREATMENT SPECIALISTS

Sec. 341.101 [Sec. 3A.— CERTIFICATION RELATING TO RESIDENTIAL WATER TREATMENT FACILITIES]. DEFINITIONS. In this subchapter:

(1) "Commission" means the Texas Natural Resource Conservation Commission.

(2) "Installation of water treatment appliances" includes connecting the appliances to all necessary utility connections in residential, commercial, or industrial facilities.

(3) "Water treatment" means a business conducted under contract that requires experience in the analysis of water, including the ability to determine how to treat influent and effluent water, to alter or purify water, and to add or remove a mineral, chemical, or bacterial content or substance. The term also includes the installation and service of potable water treatment equipment in public or private water systems and making connections necessary to complete installation of a water treatment system.

(4) "Water treatment equipment" includes appliances used to alter or purify water or to alter a mineral, chemical, or bacterial content or substance.

Sec. 341.102. WATER TREATMENT SPECIALIST CERTIFICATION PROGRAM. (a) The commission by rule [Commissioner of Health or his designee] shall establish a program to certify persons [as being] qualified to install, exchange, service [for the installation, exchange, servicing], and repair [of] residential, commercial, or industrial water treatment equipment and appliances [facilities as defined by Subsection (g) of Section 2 of this Act].

(b) The rules must establish:

(1) [Texas Board of Health shall set] standards for certification to ensure the public health and to protect the public from unqualified persons engaging in activities relating to water treatment;

(2) classes of certification;

(3) duration of certification; and

(4) reasonable annual certification fees in an amount sufficient to pay the administrative costs of the certification program, but not to exceed \$150 a year for any class of certification.

Sec. 341.103. CERTIFICATION REQUIRED. A person may not engage in water treatment unless the person first obtains a certificate from the commission under the program established under this subchapter.

Sec. 341.104. APPLICATION FOR CERTIFICATION. A person desiring to obtain certification under the program established under this subchapter shall file with the commission:

(1) an application in the form prescribed by the commission and containing the information required by the commission; and

(2) the appropriate certification fee.

Sec. 341.105. ISSUANCE OF CERTIFICATE. (a) [Nothing in this section shall be construed to require that persons licensed pursuant to this Act are subject to certification under this section:

[(b) Before a certificate is issued or renewed under this section, an applicant or holder of a certificate shall be required to pay a fee of \$10 a year.] On receipt of an application that meets commission requirements and the required fee, the commission [Texas Department of Health] shall issue to a [qualified] person who meets commission standards for certification a certificate stating that the person is qualified to install, exchange, service [for the installation, exchange, servicing], and repair [of] residential, commercial, or industrial water treatment facilities.

(b) [The Texas Board of Health shall adopt rules establishing classes of certificates, duration of certificates, and fees:

[(c)] All fees received by the commission [Texas Department of Health] under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(c) A person who holds a license under The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes) is exempt from the requirements of this subchapter.

(d) This section does not apply to an employee of an industrial facility installing or servicing water treatment equipment.

The amendment was read and was adopted by a viva voce vote.

Senator Barrientos again offered the following amendment to the bill:

**Floor Amendment No. 9**

Amend **CSHB 2912** as follows:

- (1) On page 27, line 22, strike "4,000" and substitute "8,000".
- (2) On page 27, line 37, strike "4,000" and substitute "8,000".

The amendment was read and was adopted by a viva voce vote.

**RECORD OF VOTES**

Senators Haywood and Moncrief asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 9.

On motion of Senator Harris and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 2912** as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2912 ON THIRD READING**

Senator Harris moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2912** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

The bill was read third time and was passed by a viva voce vote.

**RECORD OF VOTE**

Senator Haywood asked to be recorded as voting "Nay" on the final passage of **CSHB 2912**.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER  
Austin, Texas  
May 14, 2001

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 283**, Honoring Fred G. Wilkerson as he retires as superintendent of the Cooper I.S.D.

Respectfully,  
/s/Sharon Carter, Chief Clerk  
House of Representatives

### BILLS SIGNED

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

**HB 100, HB 108, HB 234, HB 251, HB 337, HB 394, HB 521, HB 561, HB 591, HB 593, HB 594, HB 702, HB 935, HB 995, HB 996, HB 1081, HB 1136, HB 1162, HB 1233, HB 1266, HB 1274, HB 1390, HB 1402, HB 1452, HB 1465, HB 1504, HB 1532, HB 1588, HB 1600, HB 1640, HB 1663, HB 1671, HB 1799, HB 1876, HB 1888, HB 1901, HB 2299, HB 2354, HB 2401, HB 2584, HB 2610, HB 2621, HB 3567.**

### GUEST PRESENTED

The President introduced to the Senate Congresswoman Sheila Jackson Lee of Houston.

The Senate welcomed Congresswoman Lee.

### SENATE BILL 806 ON SECOND READING

Senator Van de Putte asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

**SB 806**, Relating to health benefit plan coverage for certain mental disorders in children.

There was objection.

Senator Van de Putte then moved to suspend the regular order of business and take up **SB 806** for consideration at this time.

The motion prevailed by the following vote: Yeas 24, Nays 4, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Carona, Ellis, Gallegos, Harris, Lindsay, Lucio, Madla, Moncrief, Nelson, Ogden, Shapiro, Shapleigh, Sibley, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Fraser, Haywood, Jackson, Staples.

Present-not voting: Mr. President.

Absent: Bernsen, Duncan.

The bill was read second time and was passed to engrossment by a viva voce vote.

### RECORD OF VOTE

Senator Haywood asked to be recorded as voting "Nay" on the passage of **SB 806** to engrossment.

### SENATE BILL 806 ON THIRD READING

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 806** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 2, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Carona, Ellis, Gallegos, Harris, Jackson, Lindsay, Lucio, Madla, Moncrief, Nelson, Ogden, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Fraser, Haywood.

Present-not voting: Mr. President.

Absent: Bernsen, Duncan.

The bill was read third time and was passed by a viva voce vote.

### **RECORD OF VOTE**

Senator Haywood asked to be recorded as voting "Nay" on the final passage of **SB 806**.

### **COMMITTEE SUBSTITUTE SENATE BILL 1701 ON SECOND READING**

On motion of Senator Staples and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**CSSB 1701**, Relating to the use of previous convictions in the punishment of certain repeat and habitual felony offenders.

The bill was read second time.

Senator Staples offered the following amendment to the bill:

#### **Floor Amendment No. 1**

Amend **CSSB 1701** by adding the following section and renumbering all sections appropriately:

Chapter 31 of the Penal Code is amended by adding Section 31.03(i) to read as follows:

Section 31.03(i) An offense described for the purposes of punishment by Subsection(e)(4)(D) may be enhanced under Section 12.42(a)(1) and 12.42(a)(2) with prior felony convictions.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Staples and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSSB 1701** as amended was passed to engrossment by a viva voce vote.

### **COMMITTEE SUBSTITUTE SENATE BILL 1701 ON THIRD READING**

Senator Staples moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1701** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
SENATE BILL 1821 ON SECOND READING**

On motion of Senator Staples and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**CSSB 1821**, Relating to the creation, administration, powers, duties, operations, and financing of the Neches and Trinity Valleys Groundwater Conservation District.

The bill was read second time.

Senator Staples offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 1821** (Senate Committee Report printing) on page 2, line 17 delete all after "purchase" and before "." and insert "groundwater rights unless the purchased rights are acquired for conservation purposes and are permanently held in trust not to be produced".

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Staples and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSSB 1821** as amended was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1821 ON THIRD READING**

Senator Staples moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1821** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
SENATE BILL 1459 ON SECOND READING**

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**CSSB 1459**, Relating to the authority of the Bexar County Hospital District to impose a sales and use tax.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 1459** as follows:

(1) In SECTION 1 of the bill (committee printing page 1, line 22), between "c," and "and", strike "(d)".

(2) In SECTION 1 of the bill (committee printing page 1, line 23), strike "(a)".

(3) In SECTION 1 of the bill (committee printing page 1, lines 26-30), strike lines 26-30.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Wentworth and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSSB 1459** as amended was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1459 ON THIRD READING**

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1459** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1. (Same as previous roll call)

**HOUSE BILL 1686 ON THIRD READING**

On motion of Senator Ogden and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its third reading and final passage:

**HB 1686**, Relating to reporting of animal diseases by veterinarians.

The bill was read third time.

Senator Ogden offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 1686** on third reading by striking subsection (2) of 2nd reading Floor Amendment No. 1 lines 5-16.

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

On motion of Senator Ogden and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 1686** as again amended was finally passed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

### HOUSE BILL 269 ON THIRD READING

On motion of Senator Staples and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its third reading and final passage:

**HB 269**, Relating to the sale of alcohol in dry areas; providing criminal penalties.

The bill was read third time and was passed by a viva voce vote.

### HOUSE BILL 1467 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**HB 1467**, Relating to the amount of tuition that a public junior college may set aside for Texas Public Education Grants.

The bill was read second time and was passed to third reading by a viva voce vote.

### HOUSE BILL 1467 ON THIRD READING

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1467** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1. (Same as previous roll call)

### SENATE BILL 1714 ON SECOND READING

On motion of Senator Van de Putte and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**SB 1714**, Relating to a legislative leave time bank for peace officers and firefighters.

The bill was read second time and was passed to engrossment by a viva voce vote.

### RECORD OF VOTES

Senators Haywood and Staples asked to be recorded as voting "Nay" on the passage of **SB 1714** to engrossment.

### SENATE BILL 1714 ON THIRD READING

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 1714** be placed on its third reading and final passage.



The motion prevailed by the following vote: Yeas 28, Nays 2, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Harris, Jackson, Lindsay, Lucio, Madla, Moncrief, Nelson, Ogden, Shapiro, Shapleigh, Sibley, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Haywood, Staples.

Present-not voting: Mr. President.

The bill was read third time and was passed by a viva voce vote.

### **RECORD OF VOTES**

Senators Haywood and Staples asked to be recorded as voting "Nay" on the final passage of **SB 1714**.

### **COMMITTEE SUBSTITUTE HOUSE BILL 2572 ON SECOND READING**

On motion of Senator Staples and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**CSHB 2572**, Relating to the creation, administration, powers, duties, operations, and financing of the Pineywoods Groundwater Conservation District.

The bill was read second time.

Senator Staples offered the following amendment to the bill:

#### **Floor Amendment No. 1**

Amend **CSHB 2572** Section 7 (page 2 of the Senate Committee Report printing) by adding new subsection as follows:

(f) If a county described under this section does not confirm the creation of the district, this section no longer applies.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Staples and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 2572** as amended was passed to third reading by a viva voce vote.

### **COMMITTEE SUBSTITUTE HOUSE BILL 1475 ON SECOND READING**

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**CSHB 1475**, Relating to master technology teacher certification, grants, and stipends.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1475 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1475** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3064 ON SECOND READING**

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**CSHB 3064**, Relating to the issuance of general obligation bonds by the Texas Public Finance Authority for certain construction and repair projects and equipment purchases.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3064 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3064** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

The bill was read third time and was passed by a viva voce vote.

**HOUSE JOINT RESOLUTION 45 ON SECOND READING**

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**HJR 45**, Proposing a constitutional amendment to require the governor to call a special session for the appointment of presidential electors under certain circumstances.

The resolution was read second time and was passed to third reading by a viva voce vote.

**HOUSE JOINT RESOLUTION 45 ON THIRD READING**

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HJR 45** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

The resolution was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1. (Same as previous roll call)

**MOTION TO PLACE  
SENATE BILL 1192 ON SECOND READING**

Senator West asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

**SB 1192**, Relating to the exclusive authority of the attorney general to represent the state before the United States Supreme Court in all matters.

There was objection.

Senator West then moved to suspend the regular order of business and take up **SB 1192** for consideration at this time.

The motion was lost by the following vote: Yeas 15, Nays 11, Present-not voting 1. (Not receiving two-thirds vote of Members present)

Yeas: Armbrister, Bivins, Carona, Duncan, Ellis, Lucio, Madla, Ogden, Shapiro, Sibley, Staples, Van de Putte, Wentworth, West, Whitmire.

Nays: Barrientos, Bernsen, Cain, Gallegos, Haywood, Jackson, Lindsay, Moncrief, Nelson, Truan, Zaffirini.

Present-not voting: Mr. President.

Absent: Brown, Fraser, Harris, Shapleigh.

**CONFERENCE COMMITTEE ON HOUSE BILL 3343**

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 3343** 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 3343** 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 Bivins, Chair; Zaffirini, Van de Putte, Ellis, and Staples.

**NOTICE GIVEN FOR  
LOCAL AND UNCONTESTED CALENDAR**

Senator Cain announced that a Local and Uncontested Calendar had been furnished to each Member of the Senate. He then gave notice that the Local and Uncontested Calendar Session would be held at 8:30 a.m. tomorrow and that all bills and resolutions would be considered on second and third reading in the order in which they were listed.

**SENATE RULE 11.10 SUSPENDED  
(Posting Rule)**

On motion of Senator Cain and by unanimous consent, Senate Rule 11.10 was suspended in order that the Committee on Administration might meet today.

**MOTION TO ADJOURN**

On motion of Senator Truan, the Senate at 4:25 p.m. agreed to adjourn, upon conclusion of the Local and Uncontested Calendar Session tomorrow, until 10:00 a.m. tomorrow.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 415**

Senator Carona submitted the following Conference Committee Report:

Austin, Texas  
May 14, 2001

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

CARONA  
ZAFFIRINI  
MONCRIEF  
MADLA  
SIBLEY

On the part of the Senate

NAISHTAT  
EILAND  
WOHLGEMUTH  
SMITHEE  
AVERITT

On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to operation of the Texas Medical Liability Insurance Underwriting Association and to participation of nursing homes in that association.

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

SECTION 1. Section 2(6), Article 21.49-3, Insurance Code, is amended to read as follows:

(6) "Health care provider" means:

(A) any person, partnership, professional association, corporation, facility, or institution duly licensed or chartered by the State of Texas to provide health

care as defined in Section ~~1.03(a)(2)~~ [1-03(2)], Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), as:

(i) a registered nurse, hospital, dentist, podiatrist, pharmacist, chiropractor, or optometrist;

(ii) a for-profit[-] or not-for-profit nursing home;

(iii) ~~[-or]~~ a radiation therapy center that is independent of any other medical treatment facility and which is licensed by the Texas Department of Health in that agency's capacity as the Texas [State] Radiation Control Agency pursuant to the provisions of Chapter 401, Health and Safety Code, and which is in compliance with the regulations promulgated under that chapter;

(iv) ~~[by the Texas State Radiation Control Agency,]~~ a blood bank that is a nonprofit corporation chartered to operate a blood bank and which is accredited by the American Association of Blood Banks;

(v) [-] a nonprofit corporation which is organized for the delivery of health care to the public and which is certified under Chapter 162, Occupations Code; ~~[Article 4509a, Revised Civil Statutes of Texas, 1925,]~~ or

(vi) a ~~[migrant]~~ health center as defined by 42 U.S.C. Section 254b [P.L. 94-63], as amended; ~~[(42 U.S.C. Section 254b), or a community health center as defined by P.L. 94-63, as amended (42 U.S.C. Section 254c), that is receiving federal funds under an application approved under either Title IV, P.L. 94-63, as amended (42 U.S.C. Section 254b), or Title V, P.L. 94-63, as amended (42 U.S.C. Section 254c);]~~ or

(B) an officer, employee, or agent of an entity listed in Paragraph (A) of this subdivision ~~[any of them]~~ acting in the course and scope of that person's [his] employment.

SECTION 2. Section 3A, Article 21.49-3, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) In consultation with the Texas Department of Human Services, the commissioner shall, by rule, adopt minimum rating standards for for-profit nursing homes that must be met before a for-profit nursing home may obtain coverage through the association. The standards must promote the highest practical level of care for residents of those nursing homes.

SECTION 3. Section 4(b)(1), Article 21.49-3, Insurance Code, is amended to read as follows:

(1) The rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to the insurance written by the association and statistics relating thereto shall be subject to Subchapter B of Chapter 5 of the Insurance Code, as amended, giving due consideration to the past and prospective loss and expense experience for medical professional liability insurance within and without this state of all of the member companies of the association, trends in the frequency and severity of losses, the investment income of the association, and such other information as the commissioner [board] may require; provided, that if any article of the above subchapter is in conflict with any provision of this Act, this Act shall prevail. For purposes of this article, rates, rating plans, rating rules, rating classifications, territories, and policy forms for for-profit nursing homes are subject to the

requirements of Article 5.15-1 of this code to the same extent as not-for-profit nursing homes.

SECTION 4. Section 4, Article 21.49-3, Insurance Code, is amended by adding Subsection (d) to read as follows:

(d) A policy of medical liability insurance issued to or renewed for a physician or health care provider by the association under this article may not include coverage for punitive damages assessed against the physician or health care provider.

SECTION 5. Section 4A, Article 21.49-3, Insurance Code, is amended to read as follows:

Sec. 4A. POLICYHOLDER'S STABILIZATION RESERVE FUND. (a) There is hereby created a policyholder's stabilization reserve fund which shall be administered as provided herein and in the plan of operation of the association.

(b) Each policyholder shall pay annually into the stabilization reserve fund a charge, the amount of which shall be established annually by advisory directors chosen by health care providers and physicians eligible for insurance in the association in accordance with the plan of operation. The charge shall be in proportion to each premium payment due for liability insurance through the association. Such charge shall be separately stated in the policy, but shall not constitute a part of premiums or be subject to premium taxation, servicing fees, acquisition costs, or any other such charges.

(c) The ~~[policyholder's]~~ stabilization reserve fund shall be collected and administered by the association and shall be treated as a liability of the association along with and in the same manner as premium and loss reserves. The fund shall be valued annually by the board of directors as of the close of the last preceding year.

(d) Except as provided by Subsection (e) of this section, collections ~~[Collections]~~ of the stabilization reserve fund charge shall continue only until such time as the net balance of the stabilization reserve fund is not less than the projected sum of premiums to be written in the year following valuation date.

(e) If in any fiscal year the incurred losses and defense and cost-containment expenses from physicians or any single category of health care provider result in a net underwriting loss and exceed 25 percent of the stabilization reserve fund, as valued for that year, the commissioner may by order direct the initiation or continuation of the stabilization reserve fund charge for physicians or that category of health care provider until the fund recovers the amount by which those losses and cost-containment expenses exceed 25 percent of the fund.

(f) The stabilization reserve fund shall be credited with all stabilization reserve fund charges collected from policyholders and shall be charged with any deficit from the prior year's operation of the association.

SECTION 6. Sections 2, 3A, and 4, Article 21.49-3, Insurance Code, as amended by this Act, apply only to an insurance policy delivered, issued for delivery, or renewed on or after January 1, 2002. A policy delivered, issued for delivery, or renewed before January 1, 2002, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

**RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

**Memorial Resolutions**

**SR 1039** by Barrientos, In memory of Eugene Guy Bizzell of Austin.

**SR 1041** by West, In memory of MacGregor Wood Day of Dallas.

**HCR 50** (Brown), In memory of Robert O'Connor.

**HCR 111** (Brown), In memory of Victor T. Newman of Waco.

**HCR 112** (Brown), In memory of Lieutenant Colonel George R. "Bob" Scott of Waco.

**HCR 113** (Brown), In memory of Robert L. Dillard, Jr., of Dallas.

**HCR 280** (Wentworth), In memory of the Honorable Carlos Cristian Cadena of San Antonio.

**Congratulatory Resolutions**

**SR 1040** by Lucio, Congratulating Ruben Perez Ramos.

**SR 1042** by Harris, Congratulating the Buckley family.

**SR 1043** by Harris, Congratulating Estelle Teague.

**SR 1044** by Ellis, Commending the National Baptist Convention of America, Incorporated.

**SR 1045** by Ellis, Congratulating Don T. Haynes, Jr., of Austin.

**SR 1048** by Barrientos, Congratulating Franklin S. Sanders, Jr.

**SR 1049** by Bernsen, Congratulating Judge James D. McNicholas of Beaumont.

**SR 1050** by Wentworth, Congratulating Linda L. Robertson.

**Designation Resolution**

**HCR 268** (Moncrief), Designating May 2001 as Mental Health Month in Texas.

**RECESS**

On motion of Senator Truan, the Senate at 4:25 p.m. recessed until 8:30 a.m. tomorrow for the Local and Uncontested Calendar Session.

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**APPENDIX**

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**COMMITTEE REPORTS**

The following committee reports were received by the Senate:

May 11, 2001

VETERAN AFFAIRS AND MILITARY INSTALLATIONS — **HB 541**

**JURISPRUDENCE — HB 1137, HB 1766, HB 2249, HB 3296, HB 2638, HB 588, HB 2804, HB 596, HB 3171, HB 920**

**HEALTH AND HUMAN SERVICES — CSHB 3600, HB 1887, HB 1418, HB 2700, HB 43, HB 1099, HB 1537, HB 2419, HB 2650, HB 2807, HB 3038, HB 3507, HB 1154, HB 2989, HB 1218, HB 1124, HCR 202, HCR 223, HCR 235**

**CRIMINAL JUSTICE — HB 2230, HB 1572, HB 553, HB 1649, HB 31, HB 2798, HB 3000, HB 1071, HB 223, HB 2247, HB 776, HB 2184, HB 2097, HB 1955, HB 1925, HB 3504, HB 3351, HB 2856, HB 2890, HB 1075, HB 1209, HB 1617**

**VETERAN AFFAIRS AND MILITARY INSTALLATIONS — HB 2453**

**BUSINESS AND COMMERCE — HB 936 (Amended), HB 1214 (Amended), HB 472**

**NATURAL RESOURCES — HCR 177, HCR 245, HB 779, HB 2719, HB 3243, HB 1317, HB 1128, HB 2134, HB 2994 (Amended), HB 631, HB 3231, HB 2643, HB 3676, HB 3693, HB 3123, HB 3209**

**STATE AFFAIRS — HB 15, HB 149, HB 299, HB 489, HB 563, HB 1138, HB 1697, HB 1872, HB 2124, HB 2168, HB 2492, CSHB 2504, HB 2522, HB 2921, HB 3071, HB 3359, HB 3441**

**ADMINISTRATION — HCR 203, HCR 248, HCR 250, HCR 257, HCR 260, HCR 267, HCR 282, HB 2164, HB 2809, HB 2853, HB 399, HB 1056**

**STATE AFFAIRS — HB 7 (Amended), CSHB 1831, CSHB 1168, HB 2119, HB 2154, HB 2008, HB 1820, HB 1203**

**NATURAL RESOURCES — SCR 54, HB 1915, HB 2138, HB 2687, HB 3698, HB 3242, HB 3348, HB 2518, HB 2806**

**FINANCE — SCR 48, HJR 44, HCR 242, HB 2845, HB 3667, HB 3088, HB 3244, HB 2153, HB 3140, HB 2686**

**INTERGOVERNMENTAL RELATIONS — HB 674, HB 1096, HB 1194, HB 1388, HB 1445, HB 1689, HB 1863, HB 1890, HB 1912, HB 1940, HB 2175, HB 2260, HB 2477, HB 2488, HB 2658, HB 2681, HB 2760, HB 2778, HB 3691, HB 3692, HB 3687, HB 3671, HB 3643, HB 3637, HB 3632, HB 3623, HB 3604, HB 3552, HB 3364, HB 3229, HB 3349, HB 3184, HB 3006, HB 2863, HB 2832**

**BUSINESS AND COMMERCE — CSHB 1692, CSHB 1862**

**CRIMINAL JUSTICE — HCR 254, HB 126, HB 2926, HB 1748, HB 1234, HB 1585, HB 726**

**STATE AFFAIRS — CSHB 1117, HB 2839**

**JURISPRUDENCE — HB 546**



**INTERGOVERNMENTAL RELATIONS — HB 3001, HB 3305, HB 2744, HB 2544, HB 2076, HB 2226, HB 1468, HB 824, HB 3049, HB 2818, HB 1765, HB 3696, HB 370, HB 164, HB 969, HB 3298, HB 3663, HB 182, HB 3695, HCR 102, SB 378, SB 469**

**HEALTH AND HUMAN SERVICES — HB 154, HB 1267, HB 1340, HB 1959, HB 2383, HB 2676, HB 3210, HB 3152, HB 3153, CSHB 1183, CSSB 1152**

**CRIMINAL JUSTICE — HB 2098, HB 63, HB 653, HB 1181, HB 3036, HB 1121, HB 460, HB 141**

**JURISPRUDENCE — HB 1050, HB 1823, HB 2410, HB 2368, HB 1883, HB 3613, HB 792, HB 1712, HB 3498, HB 1377, HB 336, HB 2723, HB 1921, HB 2351, HB 900**

**BUSINESS AND COMMERCE — HB 1869, HB 2156, HB 1610, HB 557, HB 612, HB 931, HB 567, CSHB 3452, HB 2932, HB 2382, HB 1757, HB 2950, HB 3630, HB 3578, HB 1706, HB 2191, HB 2600, HB 2803, HB 1495, HB 1676, HB 2786, HB 2808, HB 2878, HB 492, HB 1806, HB 1053, HB 2430, HB 2673, HB 964, HB 2102 (Amended), HB 803, HB 2503, HB 1505, HB 2186, HB 1109, HB 3254, HB 2155, HB 1913, HB 45, HB 949, HB 2127, HB 1793, HB 1408, HB 1268, CSHB 2146, HB 2388, HB 3081, HB 1440, CSHB 2337, HB 218, HB 694, HB 1761**

**EDUCATION — HB 1755, CSHB 1776, HB 1721, HB 660, HB 3313, HB 2510, HB 1359, HB 2125, HB 1387, HB 106, HB 1276, HB 927, HB 910, HB 704, HB 152, HB 3164, HB 3147, HB 3590, HB 2452, HB 1575, HB 2682, CSHB 2879, CSHB 1645, CSHB 2323, CSHB 1144, CSHB 6**

**INTERGOVERNMENTAL RELATIONS — HB 2706**

**SENT TO GOVERNOR**

May 14, 2001

**SB 1096, SB 1140, SB 1175, SCR 55**

**SIGNED BY GOVERNOR**

May 14, 2001

**SB 84, SB 361, SB 399, SB 743, SB 817**