

SEVENTY-THIRD DAY

TUESDAY, MAY 15, 2001

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, Wentworth, West, Whitmire, Zaffirini, Mr. President.

Absent-excused: Van de Putte.

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

The Reverend Greg Rickel, Saint James Episcopal Church, Austin, offered the invocation as follows:

Gracious and loving God, we pray today for these Senators, for this state government, and for all in authority in this and every land. May the Members of this body be quiet in spirit, clear in judgment, able to understand the issues that face them. May they think often of the common people on whose behalf they must speak and act. May they have strength to put aside their preconceptions and to think freely and clearly, using their minds without the shackles of fear or prejudice. May they look to the past and the present so that they may better plan for the future. May they face their strengths and weaknesses with honesty and wisdom. Grant them generous imaginations and practical plans. Grant them patience, grant them foresight, grant them courage. In their anxieties be their security; in their opportunities be their inspiration. May their plans and actions bring Your presence even closer to mind, and the strength of a people united in purpose even closer to reality. In the name of our creator, the one God. Amen.

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

LEAVE OF ABSENCE

On motion of Senator Staples, Senator Van de Putte was granted leave of absence for today on account of important business.

CO-AUTHOR OF SENATE BILL 728

On motion of Senator Van de Putte and by unanimous consent, Senator Bernsen will be shown as Co-author of **SB 728**.

BILLS SIGNED

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

SB 24, SB 38, SB 79, SB 141, SB 187, SB 188, SB 203, SB 243, SB 297, SB 324, SB 387, SB 424, SB 532, SB 539, SB 553, SB 561, SB 569, SB 645, SB 650, SB 664, SB 694, SB 834, SB 916, SB 968, SB 1045, SB 1158, SB 1189, SB 1194, SB 1236, SB 1272, SB 1352, SB 1386, SB 1421, SB 1429, SB 1497, SB 1600, SB 1672, SB 1737.

GUESTS PRESENTED

The President introduced to the Senate the Sulphur Springs Leadership Class delegation.

The Senate welcomed its guests.

REPORT OF COMMITTEE ON NOMINATIONS

Senator Nelson submitted the following report from the Committee on Nominations:

We, your Committee on Nominations, to which were referred the following appointments, have had same under consideration and report them back to the Senate with a recommendation that they be confirmed.

Member, Texas Racing Commission: Michael Giles Rutherford, Harris County.

Members, Texas Real Estate Commission: Louise E. Hull, Victoria County; Paul H. Jordan, Williamson County; John Walton, Lubbock County.

Members, Parks and Wildlife Commission: Joseph B. C. Fitzsimons, Bexar County; Philip O'B. Montgomery III, Dallas County.

Commissioner of Insurance: Jose O. Montemayor, Travis County.

Members, Texas Structural Pest Control Board: Tomas Cantu, Hidalgo County; John Lee Morrison, Bexar County.

Members, Board of Tax Professional Examiners: Stanton Brown, Knox County; Dorye Kristeen Roe, Coke County.

Member, Veterans' Land Board: M. S. "Mike" Ussery, Randall County.

Members, Interagency Council on Early Childhood Intervention Board: Timothy J. Flannery, Harris County; Connie Hughes, Lubbock County; Patrick Joseph Oliver III, Harris County.

Member, State Commission on Judicial Conduct: James Hall, Bexar County.

NOTICE OF CONSIDERATION OF NOMINATIONS

Senator Nelson gave notice that she would tomorrow at the conclusion of morning call submit to the Senate for consideration nominations to agencies, boards, and commissions of the state.

CONCLUSION OF MORNING CALL

The President at 10:20 a.m. announced the conclusion of morning call.

SENATE BILL 626 WITH HOUSE AMENDMENT

Senator Duncan called **SB 626** 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 626** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to liens on certain property related to certain criminal offenses and the effect of forfeiture of that property; providing penalties.

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

SECTION 1. Article 59.01, Code of Criminal Procedure, is amended by adding Subdivisions (9)-(11) to read as follows:

(9) "Depository account" means the obligation of a regulated financial institution to pay the account owner under a written agreement, including a checking account, savings account, money market account, time deposit, NOW account, or certificate of deposit.

(10) "Primary state or federal financial institution regulator" means the state or federal regulatory agency that chartered and comprehensively regulates a regulated financial institution.

(11) "Regulated financial institution" means a depository institution chartered by a state or federal government, the deposits of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

SECTION 2. Articles 59.02(c)-(g), Code of Criminal Procedure, are amended to read as follows:

(c) An owner or interest holder's interest in property may not be forfeited under this chapter if the owner or interest holder proves by a preponderance of the evidence that the owner or interest holder[-

~~(1)~~ acquired and perfected the interest;

(1) before or during the act or omission giving rise to forfeiture or, if the property is real property, he acquired an ownership interest, security interest, or lien interest before a lis pendens notice was filed under Article 59.04(g) of this code[;] and

~~(2)~~ did not know or should not reasonably have known of the act or omission giving rise to the forfeiture or that it was likely to occur at or before the time of acquiring and perfecting the interest or, if the property is real property, at or before the time of acquiring the ownership interest, security interest, or lien interest; or

(2) after the act or omission giving rise to the forfeiture, but before the seizure of the property, and only if the owner or interest holder:

(A) was, at the time that the interest in the property was acquired, an owner or interest holder for value; and

(B) was without reasonable cause to believe that the property was contraband and did not purposefully avoid learning that the property was contraband.

(d) Notwithstanding any other law, if property is seized from the possession of an owner or interest holder who asserts an ownership interest, security interest, or lien interest in the property under applicable law, the owner or interest holder's rights remain in effect during the pendency of proceedings under this chapter as if possession of the property had remained with the owner or interest holder.

(e) On motion by any party or on the motion of the court, after notice in the manner provided by Article 59.04 of this code to all known owners and interest holders of property subject to forfeiture under this chapter, and after a hearing on the matter, the court may make appropriate orders to preserve and maintain the value of the property until a final disposition of the property is made under this chapter, including the sale of the property if that is the only method by which the value of the property may be preserved until final disposition.

(f) [(e)] Any property that is contraband and has been seized by the institutional division of the Texas Department of Criminal Justice shall be forfeited to the institutional division under the same rules and conditions as for other forfeitures.

(g) [(f)] An individual, firm, corporation, or other entity insured under a policy of title insurance may not assert a claim or cause of action on or because of the policy if the claim or cause of action is based on forfeiture under this chapter and, at or before the time of acquiring the ownership of real property, security interest in real property, or lien interest against real property, the insured knew or reasonably should have known of the act or omission giving rise to the forfeiture or that the act or omission was likely to occur.

(h) [(g)] The forfeiture provisions of this chapter apply to contraband as defined by Article 59.01(2)(B)(v) [(i)] of this code only in a municipality with a population of 250,000 or more.

SECTION 3. Article 59.03(a), Code of Criminal Procedure, is amended to read as follows:

(a) Property subject to forfeiture under this chapter, other than property described by Article 59.12, may be seized by any peace officer under authority of a search warrant.

SECTION 4. Article 59.04(b), Code of Criminal Procedure, is amended to read as follows:

(b) A forfeiture proceeding commences under this chapter when the attorney representing the state files a notice of the seizure and intended forfeiture in the name of the state with the clerk of the district court in the county in which the seizure is made. The attorney representing the state must attach to the notice the peace officer's sworn statement under Article 59.03 of this code or, if the property has been seized under Article 59.12(b), the statement of the terms and amount of the depository account or inventory of assets provided by the regulated financial institution to the peace officer executing the warrant in the manner described by Article 59.12(b). Except as provided by Subsection (c) of this article, the attorney representing the state shall cause certified copies of the notice to be served on the following persons in the same manner as provided for the service of process by citation in civil cases:

- (1) the owner of the property; and
- (2) any interest holder in the property.

SECTION 5. Chapter 59, Code of Criminal Procedure, is amended by adding Articles 59.12-59.14 to read as follows:

Art. 59.12. SEIZURE OF ACCOUNTS AND ASSETS AT REGULATED FINANCIAL INSTITUTION. (a) This article applies to property consisting of a depository account or assets in a regulated financial institution.

(b) A regulated financial institution, at the time a seizure warrant issued under Chapter 18 is served on the institution, may either:

(1) pay an account or tender assets held as security for an obligation owed to the institution at the time of the service of the seizure warrant; or

(2) transfer the depository account or assets to a segregated interest-bearing account in the name of the attorney representing the state as trustee, to remain in the account until the time has expired for an appeal from a decision of the court relating to the forfeiture of accounts or assets under Article 59.05.

(c) Immediately on service of the seizure warrant, the regulated financial institution shall take action as necessary to segregate the account or assets and shall provide evidence, certified by an officer of the institution, of the terms and amount of the account or a detailed inventory of the assets to the peace officer serving the warrant. Except as otherwise provided by this article, a transaction involving an account or assets, other than the deposit or reinvestment of interest, dividends, or other normally recurring payments on the account or assets that do not involve distribution of proceeds to the owner, is not authorized unless approved by the court that issued the seizure warrant or, if a forfeiture action has been instituted, the court in which that action is pending.

(d) Any accrual to the value of the account or assets during the pendency of the forfeiture proceedings is subject to the procedures for the disbursement of interest under Article 59.08.

(e) If the regulated financial institution fails to release the depository account or assets to a peace officer pursuant to a seizure warrant or transfer the account or assets as required by Subsection (b), and as a result cannot comply with the court's forfeiture order, the court:

(1) shall order the regulated financial institution and its culpable officers, agents, or employees to pay actual damages, attorney's fees, and court costs incurred as a result of the institution's failure to comply; and

(2) may find the regulated financial institution and its culpable officers, agents, or employees in contempt.

(f) A regulated financial institution that complies with this article is not liable in damages because of the compliance.

(g) This article does not:

(1) impair the right of the state to obtain possession of physical evidence or to seize a depository account or other assets for purposes other than forfeiture under this chapter; or

(2) waive criminal or civil remedies available under other law.

Art. 59.13. DISCLOSURE OF INFORMATION RELATING TO ACCOUNTS AND ASSETS AT REGULATED FINANCIAL INSTITUTION. (a) The attorney representing the state may disclose information to the primary state or federal financial institution regulator, including grand jury information or otherwise confidential information, relating to any action contemplated or brought under this chapter that involves property consisting of a depository account in a regulated financial institution or assets held by a regulated financial institution as security for an obligation owed to a regulated financial institution. An attorney representing the state who discloses information as permitted by this subsection is not subject to contempt under Article 20.02 for that disclosure.

(b) A primary state or federal financial institution regulator shall keep confidential any information provided by the attorney representing the state under Subsection (a). The sharing of information under Subsection (a) by a representative of

the state is not considered a waiver by the state of any privilege or claim of confidentiality.

(c) A regulator described by Subsection (b) commits an offense if the regulator knowingly discloses information in violation of this article. An offense under this subsection is punishable by confinement in jail for a period not to exceed 30 days, a fine not to exceed \$500, or both such confinement and fine.

Art. 59.14. NOTICE TO PRIMARY STATE AND FEDERAL FINANCIAL INSTITUTION REGULATORS. (a) Before taking any action under this chapter that implicates a potentially culpable officer or director of a regulated financial institution, the attorney representing the state shall notify the banking commissioner, who shall notify the appropriate state or federal financial institution regulator.

(b) A state or federal financial institution regulator shall keep confidential any information provided by the attorney representing the state under Subsection (a).

(c) A regulator described by Subsection (b) commits an offense if the regulator knowingly discloses information in violation of this article. An offense under this subsection is punishable by confinement in jail for a period not to exceed 30 days, a fine not to exceed \$500, or both such confinement and fine.

(d) The provision of notice under Subsection (a) is not considered a waiver by the state of any privilege or claim of confidentiality.

SECTION 6. The change in law made by this Act applies only to a seizure that occurs on or after the effective date of this Act. A seizure that occurs before the effective date of this Act is covered by the law in effect when the seizure occurred, and the former law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 2001.

The amendment was read.

On motion of Senator Duncan, the Senate concurred in the House amendment to **SB 626** by a viva voce vote.

(Senator Truan in Chair)

SENATE BILL 1407 WITH HOUSE AMENDMENT

Senator Madla called **SB 1407** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1407** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the sale of livestock by a personal representative of a decedent's estate.

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

SECTION 1. Section 335, Texas Probate Code, is amended to read as follows:

Sec. 335. SPECIAL PROVISIONS PERTAINING TO LIVESTOCK. When the personal representative of an estate has in his possession any livestock which he deems necessary or to the advantage of the estate to sell, he may, in addition to any other method provided by law for the sale of personal property, obtain authority from the

court in which the estate is pending to sell such livestock through a bonded livestock commission merchant, or a bonded livestock auction commission merchant. Such authority may be granted by the court upon written and sworn application by the personal representative, or by any person interested in the estate, describing the livestock sought to be sold, and setting out the reasons why it is deemed necessary or to the advantage of the estate that the application be granted. The court shall forthwith consider any such application, and may, in its discretion, hear evidence for or against the same, with or without notice, as the facts warrant. If the application be granted, the court shall enter its order to that effect, and shall authorize delivery of the livestock to any bonded livestock commission merchant or bonded livestock auction commission merchant for sale in the regular course of business. The commission merchant shall be paid his usual and customary charges, not to exceed five [~~three~~] per cent of the sale price, for the sale of such livestock. A report of such sale, supported by a verified copy of the merchant's account of sale, shall be made promptly by the personal representative to the court, but no order of confirmation by the court is required to pass title to the purchaser of such livestock.

SECTION 2. This Act takes effect September 1, 2001, and applies only to the estate of a decedent who dies on or after that date. The estate of a decedent who dies before the effective date of this Act is governed by the law in effect on the date of the decedent's death, and the former law is continued in effect for that purpose.

The amendment was read.

On motion of Senator Madla, the Senate concurred in the House amendment to **SB 1407** by a viva voce vote.

PHYSICIAN OF THE DAY

Senator Madla was recognized and presented Dr. Lloyd Van Winkle of Castroville as the Physician of the Day.

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

SENATE BILL 980 WITH HOUSE AMENDMENT

Senator Carona called **SB 980** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 980** on page 1, between lines 14 and 15, by inserting the following:

(3) "Property development" means the new construction of residential buildings on vacant land.

The amendment was read.

On motion of Senator Carona, the Senate concurred in the House amendment to **SB 980** by a viva voce vote.

SENATE BILL 1123 WITH HOUSE AMENDMENT

Senator Armbrister called **SB 1123** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1123** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the enforcement and collection of taxes, fees, and other revenue; providing criminal penalties.

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

SECTION 1. Article 2.12, Code of Criminal Procedure, as amended by Chapters 90, 322, 882, and 974, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

Art. 2.12. WHO ARE PEACE OFFICERS. The following are peace officers:

(1) sheriffs, their deputies, and those reserve deputies who hold a permanent peace officer license issued under Chapter 1701, Occupations [~~415, Government~~] Code;

(2) constables, deputy constables, and those reserve deputy constables who hold a permanent peace officer license issued under Chapter 1701, Occupations [~~415, Government~~] Code;

(3) marshals or police officers of an incorporated city, town, or village, and those reserve municipal police officers who hold a permanent peace officer license issued under Chapter 1701, Occupations [~~415, Government~~] Code;

(4) rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety;

(5) investigators of the district attorneys', criminal district attorneys', and county attorneys' offices;

(6) law enforcement agents of the Texas Alcoholic Beverage Commission;

(7) each member of an arson investigating unit commissioned by a city, a county, or the state;

(8) officers commissioned under Section 37.081, Education Code, or Subchapter E, Chapter 51, Education Code;

(9) officers commissioned by the General Services Commission;

(10) law enforcement officers commissioned by the Parks and Wildlife Commission;

(11) airport police officers commissioned by a city with a population of more than one million[~~-, according to the most recent federal census,;~~] that operates an airport that serves commercial air carriers;

(12) airport security personnel commissioned as peace officers by the governing body of any political subdivision of this state, other than a city described by Subdivision (11), that operates an airport that serves commercial air carriers;

(13) municipal park and recreational patrolmen and security officers;

(14) security officers and investigators commissioned as peace officers by the comptroller;

(15) officers commissioned by a water control and improvement district under Section 49.216, Water Code;

(16) officers commissioned by a board of trustees under Chapter 54, Transportation Code [~~341, Acts of the 57th Legislature, Regular Session, 1961 (Article 1187f, Vernon's Texas Civil Statutes)~~];

(17) investigators commissioned by the Texas State Board of Medical Examiners;

(18) officers commissioned by the board of managers of the Dallas County Hospital District, the Tarrant County Hospital District, or the Bexar County Hospital District under Section 281.057, Health and Safety Code;

(19) county park rangers commissioned under Subchapter E, Chapter 351, Local Government Code;

(20) investigators employed by the Texas Racing Commission;

(21) officers commissioned under Chapter 554, Occupations Code [~~by the State Board of Pharmacy~~];

(22) officers commissioned by the governing body of a metropolitan rapid transit authority under Section 451.108, Transportation Code, or by a regional transportation authority under Section 452.110, Transportation Code;

(23) investigators commissioned by the attorney general under Section 402.009, Government Code;

(24) security officers and investigators commissioned as peace officers under Chapter 466, Government Code;

(25) an officer employed by the Texas Department of Health under Section 431.2471, Health and Safety Code;

(26) officers appointed by an appellate court under Subchapter F, Chapter 53, Government Code;

(27) officers commissioned by the state fire marshal under Chapter 417, Government Code;

(28) an investigator commissioned by the commissioner of insurance under Article 1.10D, Insurance Code;

(29) apprehension specialists commissioned by the Texas Youth Commission as officers under Section 61.0931, Human Resources Code; [~~and~~]

(30) officers appointed by the executive director of the Texas Department of Criminal Justice under Section 493.019, Government Code;[:]

(31) [~~(30)~~] investigators commissioned by the Commission on Law Enforcement Officer Standards and Education under Section 1701.160, Occupations [~~415.016, Government~~] Code; [~~and~~:-]

(32) commission [~~(30) board~~] investigators commissioned by the Texas Commission on Private Security under Section 1702.061(f), Occupations Code [~~(10(f), Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes)~~].

SECTION 2. Section 411.109, Government Code, is amended to read as follows:

Sec. 411.109. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: COMPTROLLER. (a) The comptroller is entitled to obtain from the department criminal history record information maintained by the department that the comptroller believes is necessary for the enforcement or administration of Chapter 151, 152, 153, 154, or [Chapter] 155, Tax Code, including criminal history record information that relates to a person who is:

(1) an applicant for a permit under any of those chapters [~~Chapter 154 or Chapter 155, Tax Code~~];

(2) a permit holder under any [~~either~~] of those chapters;

(3) an officer, director, stockholder owning 10 percent or more of the outstanding stock, partner, owner, or managing employee of an applicant or permit holder under any [~~either~~] of those chapters that is a corporation, association, joint venture, syndicate, partnership, or proprietorship;

(4) believed to have violated any of those chapters [~~Chapter 154 or Chapter 155, Tax Code~~]; or

(5) being considered by the comptroller for employment as a peace officer.

(b) The comptroller is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is an employee of or an applicant for employment with the comptroller's office in a position that involves:

(1) handling currency, checks, or other funds;

(2) having access to taxpayer account information;

(3) working in a location designated by the comptroller as a security-sensitive area; or

(4) performing financial management duties designated by the comptroller as security sensitive.

(c) The comptroller is entitled to obtain from the department criminal history record information maintained by the department that the comptroller believes is necessary for the enforcement or administration of Chapter 159, Tax Code.

(d) Criminal history record information obtained by the comptroller under Subsections (a), [~~and~~] (b), and (c) may not be released or disclosed to any person except on court order or as provided by Subsection (e) [~~(d)~~].

(e) [~~(d)~~] The comptroller is not prohibited from disclosing to a person who is the subject of criminal history record information the dates and places of arrests, the offenses, and the dispositions in the criminal history record information.

SECTION 3. Section 111.020, Tax Code, is amended by adding Subsection (f) to read as follows:

(f) Compliance with Subsection (a) is not a defense to an assessment of tax liability under Section 111.024 if:

(1) the amount withheld from the purchase price is not sufficient to fully satisfy the liability of the seller of the business or stock of goods; and

(2) the purchase price paid to the seller for the business or stock of goods is not reasonably equivalent to the value of the business or stock of goods.

SECTION 4. Sections 111.021 (a) and (c), Tax Code, are amended to read as follows:

(a) If a person is delinquent in the payment of an amount required to be paid or has not paid an amount claimed in a determination made against the person, the comptroller may notify personally, [~~or~~] by [~~registered~~] mail, or by means of facsimile or electronic transmission any other person who:

(1) possesses or controls a credit, bank or savings account, deposit, or other intangible or personal property belonging to the delinquent or the person against whom the unpaid determination is made, hereafter referred to as "assets"; or

(2) owes a debt to the delinquent or person against whom the unpaid determination is made.

(c) A notice under this section may be given at any time within three years after the payment becomes delinquent or within three years after the last recording of a lien filed under this title, but not thereafter. The notice must state the amount of taxes, penalties and interest due and owing, and an additional amount of penalties and interest that will accrue by operation of law in a period not to exceed 30 days and, in the case of a credit, bank or savings account or deposit, is effective only up to that amount.

SECTION 5. Section 111.022(a), Tax Code, is amended to read as follows:

(a) If the comptroller believes that the collection of a tax required to be paid to the state or the amount due for a tax period [~~of a determination~~] is jeopardized by delay, the comptroller shall issue a determination stating the amount and that the tax collection is in jeopardy. The amount required to be paid to the state or due for the tax period [determined] is due and payable immediately.

SECTION 6. Subchapter A, Chapter 111, Tax Code, is amended by adding Section 111.024 to read as follows:

Sec. 111.024. LIABILITY IN FRAUDULENT TRANSFERS. (a) A person who acquires a business or the assets of a business from a taxpayer through a fraudulent transfer or a sham transaction is liable for any tax, penalty, and interest owed by the taxpayer.

(b) A transfer of a business or the assets of a business is considered to be a fraudulent transfer or a sham transaction if the taxpayer made the transfer or undertook the transaction:

(1) with intent to evade, hinder, delay, or prevent the collection of any tax, penalty, or interest owed under this title; or

(2) without receiving a reasonably equivalent value in exchange for the business or business assets subject to the transfer or transaction.

(c) In determining the intent of the taxpayer under Subsection (b)(1), consideration may be given, among other factors, to whether:

(1) the transfer was to a current or former business insider, associate, or employee of the taxpayer or to a person related to the taxpayer within the third degree of consanguinity by blood or marriage;

(2) the transfer was to a third party who subsequently transferred the business or assets of the business to a current or former business insider, associate, or employee of the taxpayer or to a person related to the taxpayer within the third degree of consanguinity by blood or marriage;

(3) the taxpayer retained possession or control of the business or the assets of the business after the transfer or transaction;

(4) the taxpayer's business and the transferee's business are essentially operated as a single business entity at the same location;

(5) before the transfer or the transaction occurred, the taxpayer had either been subjected to or apprised of impending collection action by the comptroller or by the attorney general;

(6) the transfer or transaction was concealed;

(7) the taxpayer was insolvent at the time of the transfer or became insolvent not later than the 31st day after the date the transfer or transaction occurred; or

(8) the transfer or transaction involved all or substantially all of the taxpayer's assets.

(d) This section does not apply to a transfer of a business or the assets of a business:

(1) through a court order on dissolution of a marriage; or

(2) by descent or distribution or testate succession on the death of a taxpayer.

SECTION 7. Section 113.009, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) A state tax lien filed under this chapter may not be released fully until the taxpayer pays all other taxes, penalties, interest, fees, or sums that the taxpayer owes the state and that are administered or collected by the comptroller.

SECTION 8. Section 113.105(b), Tax Code, is amended to read as follows:

(b) The state tax lien on personal property and real estate attaches to personal property and real estate owned by the taxpayer beginning on the first day of the period for which [on or after the date] the lien is filed by the state.

SECTION 9. Section 151.023, Tax Code, is amended to read as follows:

Sec. 151.023. INVESTIGATIONS AND AUDITS. (a) The comptroller, or another person authorized by the comptroller in writing, may examine, copy, and photograph the books, records, papers, and equipment of a person who sells taxable items or of a person liable for the use tax and may investigate the character of the business of the person to verify the accuracy of the person's report or to determine the amount of tax that may be required to be paid if no report has been filed.

(b) For the purpose of determining the amount of tax collected and payable to the state, the amount of tax accruing and due, and whether a tax liability has been incurred under this chapter, the comptroller or a person authorized by the comptroller may:

(1) inspect at any time during business hours any business premises where a taxable event has occurred and examine, copy, and photograph the books, returns, records, papers, and equipment relating to the conduct in question; and

(2) require by delivery of written notice to the taxpayer or to an employee, representative, or agent of the taxpayer that, not later than the 10th working day after the date the notice is delivered, the taxpayer produce to an agent or designated representative of the comptroller for inspection the books, records, papers, and returns relating to the taxable activity stated in the notice.

SECTION 10. Section 151.025(a), Tax Code, is amended to read as follows:

(a) All sellers and all other persons storing, using, or consuming in this state a taxable item purchased from a retailer shall keep the following records in the form the comptroller requires:

(1) records of gross receipts, including documentation in the form of receipts, shipping manifests, invoices, and other pertinent papers, from each rental, lease, taxable service, and taxable labor transaction occurring during each reporting period;

(2) records in the form of receipts, shipping manifests, invoices, and other pertinent papers of all purchases of taxable items from every source made during each reporting period; and

(3) records in the form of receipts, shipping manifests, invoices, and other pertinent papers that substantiate each claimed deduction or exclusion authorized by law[, receipts, invoices, and other pertinent papers in the form that the comptroller reasonably requires].

SECTION 11. Section 151.253(b), Tax Code, is amended to read as follows:

(b) The comptroller shall fix the amount of security required in each case, taking into consideration the amount of tax that has or is expected to become due from the

person under this chapter and all other applicable local sales and use taxes [the Local Sales and Use Tax Act] and the necessity to protect the state against the failure to pay these taxes. The[, except that the] maximum amount of security that may be required is the greater [lesser] of \$100,000 [\$50,000] or four [three] times the amount of the person's average monthly tax liability.

SECTION 12. Subchapter L, Chapter 151, Tax Code, is amended by adding Section 151.7032 to read as follows:

Sec. 151.7032. FAILURE TO PAY TAXES COLLECTED; CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally or knowingly fails to pay to the comptroller, as required by this chapter, the tax collected by that person.

(b) An offense under this section is:

(1) a Class C misdemeanor if the amount of the tax collected and not paid is less than \$10,000;

(2) a state jail felony if the amount of the tax collected and not paid is \$10,000 or more but less than \$20,000;

(3) a felony of the third degree if the amount of the tax collected and not paid is \$20,000 or more but less than \$100,000; and

(4) a felony of the second degree if the amount of the tax collected and not paid is \$100,000 or more.

SECTION 13. Section 151.708, Tax Code, is amended to read as follows:

Sec. 151.708. SELLING WITHOUT PERMIT; CRIMINAL PENALTY. (a) A person or officer of a corporation commits an offense if the person or corporation engages in business as a retailer in this state without a permit required by this chapter or after the permit is suspended.

(b) A first [An] offense under this section is a Class C misdemeanor [punishable by a fine of not more than \$500].

(c) If it is shown on the trial of an offense under this section that the person or officer has previously been finally convicted of one offense under this section, on conviction the person or officer shall be punished for a Class B misdemeanor punishable by a fine only, not to exceed \$2,000 [A separate offense is committed each day that a person or officer of a corporation violates this section].

(d) If it is shown on the trial of an offense under this section that the person or officer has previously been finally convicted of two offenses under this section, on conviction the person or officer shall be punished for a Class A misdemeanor punishable by a fine only, not to exceed \$4,000.

(e) If it is shown on the trial of an offense under this section that the person or officer has previously been finally convicted of three or more offenses under this section, on conviction the person or officer shall be punished for a Class A misdemeanor punishable by a fine not to exceed \$4,000, confinement in jail for a term not to exceed one year, or both the fine and confinement.

(f) Each day a person or an officer of a corporation operates a business without a permit or with a suspended permit is a separate offense under this section.

SECTION 14. Section 151.709, Tax Code, is amended to read as follows:

Sec. 151.709. FAILURE TO FURNISH REPORT [OR INFORMATION]; CRIMINAL PENALTY. (a) A person commits an offense if the person refuses to furnish a report [or other data] as required by this chapter or by the comptroller as authorized by this chapter.

(b) ~~A first [An]~~ offense under this section is a Class C misdemeanor [~~punishable by a fine of not more than \$500~~].

(c) If it is shown on the trial of an offense under this section that the person has previously been finally convicted of one offense under this section, on conviction the person shall be punished for a Class B misdemeanor punishable by a fine only, not to exceed \$2,000.

(d) If it is shown on the trial of an offense under this section that the person has previously been finally convicted of two or more offenses under this section, on conviction the person shall be punished for a Class A misdemeanor punishable by a fine only, not to exceed \$4,000.

SECTION 15. Subchapter L, Chapter 151, Tax Code, is amended by adding Sections 151.7101, 151.7102, and 151.7103 to read as follows:

Sec. 151.7101. ELECTION OF OFFENSES. If a violation of a criminal provision of this chapter by a taxpayer constitutes another offense under the laws of this state, the state may elect the offense for which it will prosecute the taxpayer.

Sec. 151.7102. FALSE ENTRY OR FAILURE TO ENTER IN RECORDS. (a) A person commits an offense if the person intentionally or knowingly conceals, destroys, makes a false entry in, or fails to make an entry in records that are required to be made or kept under this chapter.

(b) An offense under this section is a felony of the third degree.

Sec. 151.7103. FAILURE TO PRODUCE FOR INSPECTION OR ALLOW INSPECTION OF RECORDS. (a) A person commits an offense if the person is asked, by a person authorized by the comptroller, to produce or allow inspection of a record required to be kept under this chapter and the person fails to produce the record or allow the inspection after the allowed time.

(b) An offense under this section is a Class C misdemeanor. Each day the person fails to allow inspection of records or produce records for inspection after receiving a request is a separate offense.

SECTION 16. Subchapter L, Chapter 151, Tax Code, is amended by adding Section 151.714 to read as follows:

Sec. 151.714. VENUE FOR CRIMINAL PROSECUTION. Venue for prosecution for an offense under this chapter is in:

(1) the county in which any element of the offense occurs; or

(2) Travis County.

SECTION 17. Section 152.101(b), Tax Code, is amended to read as follows:

(b) An offense under this section is a felony of the third degree [~~punishable by imprisonment for not less than two nor more than five years or a fine of not more than \$1,000, or both~~].

SECTION 18. Section 152.102(b), Tax Code, is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor [~~punishable by a fine of not less than \$10 nor more than \$500 or confinement in the county jail for not less than one day nor more than 30 days, or both~~].

SECTION 19. Section 152.103(b), Tax Code, is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor [~~punishable by a fine of not less than \$25 nor more than \$500~~].

SECTION 20. Subchapter F, Chapter 152, Tax Code, is amended by adding Sections 152.104 and 152.105 to read as follows:

Sec. 152.104. FAILURE TO REMIT TAX COLLECTED. (a) A person who is a dealer, as defined by Section 503.001, Transportation Code, or who is acting in the capacity of a dealer, commits an offense if the person intentionally or knowingly fails to pay to the tax assessor-collector the motor vehicle sales tax collected as required by this chapter.

(b) An offense under this section is:

(1) a Class C misdemeanor if the value of the tax collected and not paid is less than \$1,500;

(2) a state jail felony if the value of the tax collected and not paid is \$1,500 or more but less than \$20,000;

(3) a felony of the third degree if the value of the tax collected and not paid is \$20,000 or more but less than \$100,000;

(4) a felony of the second degree if the value of the tax collected and not paid is \$100,000 or more but less than \$200,000; and

(5) a felony of the first degree if the value of the tax collected and not paid is \$200,000 or more.

(c) When amounts are obtained in violation of this section pursuant to one scheme or continuing course of conduct, whether from the same or several resources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of the offense.

Sec. 152.105. VENUE FOR CRIMINAL PROSECUTIONS. Venue for prosecution of any offense under this chapter is in:

(1) the county in which any element of the offense occurs; or

(2) Travis County.

SECTION 21. Section 153.402(a), Tax Code, is amended to read as follows:

(a) A person forfeits to the state a civil penalty of not less than \$25 nor more than \$200 if the person:

(1) refuses to stop and permit the inspection and examination of a motor vehicle transporting or using motor fuel on demand of a peace officer or the comptroller;

(2) operates a motor vehicle in this state without a valid interstate trucker's or a trip permit when the person is required to hold one of those permits;

(3) operates a liquefied gas-propelled motor vehicle that is required to be licensed in Texas, including motor vehicles equipped with dual carburetion, and does not display a current liquefied gas tax decal or multistate fuels tax agreement decal;

(4) makes a tax-free sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle that does not display a current Texas liquefied gas tax decal;

(5) makes a taxable sale or delivery of liquefied gas without holding a valid dealer's permit;

(6) makes a tax-free sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing out-of-state license plates;

(7) makes a delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing Texas license plates and no Texas liquefied gas tax decal, unless licensed under a multistate fuels tax agreement;

(8) transports gasoline or diesel fuel in any cargo tank that has a connection by pipe, tube, valve, or otherwise with the fuel injector or carburetor or with the fuel supply tank feeding the fuel injector or carburetor of the motor vehicle transporting the product;

(9) sells or delivers gasoline or diesel fuel from any fuel supply tank connected with the fuel injector or carburetor of a motor vehicle;

(10) owns or operates a motor vehicle for which reports or mileage records are required by this chapter without an operating odometer or other device in good working condition to record accurately the miles traveled;

(11) furnishes to a supplier a signed statement [~~to a supplier~~] for purchasing diesel fuel tax free and then uses the tax-free diesel fuel to operate a diesel-powered motor vehicle on a public highway [~~of a type that may be legally used by the purchaser for the operation of a motor vehicle on the public highway under state or federal law tax free when he owns, operates, or acquires a diesel-powered motor vehicle~~];

(12) fails or refuses to comply with or violates a provision of this chapter;

(13) fails or refuses to comply with or violates a comptroller's rule for administering or enforcing this chapter;

(14) is an importer who does not obtain an import verification number when required by this chapter; or

(15) purchases motor fuel for export, on which the tax imposed by this chapter has not been paid, and subsequently diverts or causes the motor fuel to be diverted to a destination in this state or any other state or country other than the originally designated state or country without first obtaining a diversion number.

SECTION 22. Section 153.403, Tax Code, is amended to read as follows:

Sec. 153.403. CRIMINAL OFFENSES. Except as provided by Section 153.404 [~~of this code~~], a person commits an offense if the person:

(1) refuses to stop and permit the inspection and examination of a motor vehicle transporting or using motor fuel on the demand of a peace officer or the comptroller;

(2) is required to hold a valid trip permit or interstate trucker's permit, but operates a motor vehicle in this state without a valid trip permit or interstate trucker's permit;

(3) operates a liquefied gas-propelled motor vehicle that is required to be licensed in Texas, including a motor vehicle equipped with dual carburetion, and does not display a current liquefied gas tax decal or multistate fuels tax agreement decal;

(4) transports gasoline or diesel fuel in any cargo tank that has a connection by pipe, tube, valve, or otherwise with the fuel injector or carburetor or with the fuel supply tank feeding the fuel injector or carburetor of the motor vehicle transporting the product;

(5) sells or delivers gasoline or diesel fuel from a fuel supply tank that is connected with the fuel injector or carburetor of a motor vehicle;

(6) owns or operates a motor vehicle for which reports or mileage records are required by this chapter without an operating odometer or other device in good working condition to record accurately the miles traveled;

(7) as a diesel tax prepaid user fails to prepay the tax on every diesel-powered motor vehicle owned or operated by him;

(8) uses dyed diesel fuel, on which a tax is required to be paid, for the operation of a motor vehicle on a public highway;

(9) makes a tax-free sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle that does not display a current Texas liquefied gas tax decal;

(10) makes a sale or delivery of liquefied gas on which the person knows the tax is required to be collected, if at the time the sale is made the person does not hold a valid dealer's permit;

(11) makes a tax-free sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing out-of-state license plates;

(12) makes a delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing Texas license plates and no Texas liquefied gas tax decal, unless licensed under a multistate fuels tax agreement;

(13) refuses to permit the comptroller or the attorney general to inspect, examine, or audit a book or record required to be kept by a distributor, supplier, dyed diesel fuel bonded user, agricultural bonded user, dealer, interstate trucker, aviation fuel dealer, jobber, common or contract carrier, or any person required to hold a permit under this chapter;

(14) refuses to permit the comptroller or the attorney general to inspect or examine any plant, equipment, materials, or premises where motor fuel is produced, processed, stored, sold, delivered, or used;

(15) refuses to permit the comptroller, ~~or~~ the attorney general, an employee of either of those officials, a peace officer, an employee of the Texas Natural Resource Conservation Commission, or an employee of the Department of Agriculture to measure or gauge the contents of or take samples from a storage tank or container on premises where motor fuel is produced, processed, stored, sold, delivered, or used;

(16) is a distributor, dyed diesel fuel bonded user, agricultural bonded user, interstate trucker, or supplier and fails or refuses to make or deliver to the comptroller a report required by this chapter to be made and delivered to the comptroller;

(17) is an importer who does not obtain an import verification number when required by this chapter;

(18) purchases motor fuel for export, on which the tax imposed by this chapter has not been paid, and subsequently diverts or causes the motor fuel to be diverted to a destination in this state or any other state or country other than the originally designated state or country without first obtaining a diversion number;

(19) conceals motor fuel with the intent of engaging in any conduct proscribed by this chapter or refuses to make sales of motor fuel on the volume-corrected basis prescribed by this chapter;

(20) refuses, while transporting motor fuel, to stop the motor vehicle he is operating when called on to do so by a person authorized to stop the motor vehicle;

(21) refuses to surrender a motor vehicle and cargo for impoundment after being ordered to do so by a person authorized to impound the motor vehicle and cargo;

(22) mutilates, destroys, or secretes a book or record required by this chapter to be kept by a distributor, supplier, dyed diesel fuel bonded user, agricultural bonded user, dealer, interstate trucker, aviation fuel dealer, jobber, or person required to hold a permit under this chapter;

(23) is a distributor, supplier, dyed diesel fuel bonded user, agricultural bonded user, dealer, interstate trucker, aviation fuel dealer, jobber, or other person required to hold a permit under this chapter, or the agent or employee of one of those persons and makes a false entry or fails to make an entry in the books and records required under this chapter to be made by the person or fails to retain a document as required by this chapter;

(24) transports in any manner motor fuel under a false cargo manifest or shipping document, or transports in any manner motor fuel to a location without delivering at the same time a shipping document relating to that shipment;

(25) engages in a motor fuel transaction that requires that the person have a permit under this chapter without then and there holding the required permit;

(26) makes and delivers to the comptroller a report required under this chapter to be made and delivered to the comptroller, if the report contains false information;

(27) forges, falsifies, or alters an invoice prescribed by law;

(28) makes any statement, knowing said statement to be false, in a claim for a tax refund filed with the comptroller;

(29) furnishes to a supplier a signed statement for purchasing diesel fuel tax free and then uses the tax-free diesel fuel to operate a diesel-powered motor vehicle on a public highway [of a type that may be legally used by the purchaser for the operation of a motor vehicle on the public highway under state or federal law tax free when he owns, operates, or acquires a diesel-powered motor vehicle];

(30) holds an aviation fuel dealer's permit and makes a taxable sale or use of any gasoline or diesel fuel;

(31) fails to remit any tax funds collected by a distributor, supplier, dyed diesel fuel bonded user, agricultural bonded user, dealer, interstate trucker, jobber, or any other person required to hold a permit under this chapter;

(32) makes a sale of diesel fuel tax free into a storage facility of a person who:

(A) is not permitted as a supplier, as an aviation fuel dealer, as a dyed diesel fuel bonded user, as an agricultural bonded user, or as a diesel tax prepaid user of diesel fuel; or

(B) does not furnish to the permitted supplier a signed statement prescribed in Section 153.205 [~~of this code~~];

(33) makes a sale of gasoline tax free to any person who is not permitted as either a distributor or an aviation fuel dealer;

(34) is a dealer who purchases any motor fuel tax free when not authorized to make a tax-free purchase under this chapter;

(35) is a dealer who purchases motor fuel with the intent to evade any tax imposed by this chapter, or who accepts a delivery of motor fuel by any means and does not at the same time accept or receive a shipping document relating to the delivery;

(36) transports motor fuel for which a cargo manifest or shipping document is required to be carried without possessing or exhibiting on demand by an officer authorized to make the demand a cargo manifest or shipping document containing the information required to be shown on the manifest or shipping document;

(37) imports, sells, uses, distributes, or stores motor fuel within this state on which the taxes imposed by this chapter are owed but have not been first paid to or reported by the holder of a distributor, supplier, liquefied gas dealer, interstate trucker, diesel tax prepaid user, dyed diesel fuel bonded user, or agricultural bonded user permit;

(38) blends products together to produce a blended fuel that is offered for sale, sold, or used that expands the volume of the original product to evade paying applicable motor fuel taxes; or

(39) evades or attempts to evade in any manner a tax imposed on motor fuel by this chapter.

SECTION 23. Sections 153.404(c) and (d), Tax Code, are amended to read as follows:

(c) The prohibition under Section 153.403(32) does not apply to the tax-free sale or distribution of diesel fuel authorized by Section 153.203(1), (2), [~~or~~] (5), (8), or (9).

(d) The prohibition under Section 153.403(33) does not apply to the tax-free sale or distribution of gasoline under Section 153.104(2), ~~(or) (4), (7), or (8).~~

SECTION 24. Section 183.053(b), Tax Code, is amended to read as follows:

(b) The total of bonds, certificates of deposit, letters of credit, or other security determined to be sufficient by the comptroller of a permittee subject to the tax imposed by this chapter shall be in an amount that the comptroller determines to be sufficient to protect the fiscal interests of the state. The comptroller may not set the amount of security at less than \$1,000 or more than \$50,000 [~~\$25,000~~].

SECTION 25. Section A, Article 8.15, Texas Business Corporation Act, is amended to read as follows:

A. The original and a copy of such application for withdrawal, along with a certificate from the comptroller [~~Comptroller of Public Accounts~~] that all [~~franchise~~] taxes, including all applicable penalties and interest, administered by the comptroller under Title 2, Tax Code, have been paid, shall be delivered to the secretary of state [~~Secretary of State~~]. If the secretary of state [~~Secretary of State~~] finds that such application conforms to the provisions of this Act, the secretary of state [~~Secretary of State~~] shall, when the appropriate filing fee is paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in the office of the secretary of state [~~Secretary of State~~].

(3) Issue a certificate of withdrawal to which shall be affixed the copy.

SECTION 26. Section A, Article 6.08, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

A. The original and a copy of such articles of dissolution, along with a certificate from the comptroller that all [~~franchise~~] taxes, including all applicable penalties and interest, administered by the comptroller under Title 2, Tax Code, have been paid, shall be delivered to the secretary of state [~~Secretary of State~~]. If the secretary of state [~~Secretary of State~~] finds that such articles of dissolution conform to law, the secretary of state [~~Secretary of State~~] shall, when the appropriate filing fee is paid as required by law:

(1) Endorse on the original and copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in the secretary of state's [~~Secretary of State's~~] office.

(3) Issue a certificate of dissolution to which there shall be affixed the copy.

SECTION 27. Section A, Article 7.10, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

A. The original and a copy of such application for withdrawal, along with a certificate from the comptroller that all [~~franchise~~] taxes, including penalties and interest, administered by the comptroller under Title 2, Tax Code, have been paid, shall be delivered to the secretary of state [~~Secretary of State~~]. If the secretary of state [~~Secretary of State~~] finds that such application conforms to the provisions of this Act, the secretary of state [~~Secretary of State~~] shall, when the appropriate filing fee is paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in the secretary of state's [~~Secretary of State's~~] office.

(3) Issue a certificate of withdrawal to which there shall be affixed the copy.

SECTION 28. Section 151.710, Tax Code, is repealed.

SECTION 29. (a) This Act takes effect September 1, 2001.

(b) The changes in law made by Sections 7 and 8 of this Act apply only to a lien filed on or after the effective date of this Act. A lien filed before the effective date of this Act is governed by the law in effect on the date the lien was filed, and that law is continued in effect for that purpose.

(c) The changes in law made by Sections 12 through 20 and by Sections 22 and 23 of this Act apply only to an offense committed on or after the effective date of this Act. For purposes of this subsection, an offense is committed before the effective date of this Act if any element of the offense is committed before that date. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

(d) The change in law made by Section 22 of this Act applies only to a signed statement furnished on or after the effective date of this Act. A signed statement furnished before the effective date of this Act is governed by the law in effect on the date the statement was furnished, and that law is continued in effect for that purpose.

The amendment was read.

On motion of Senator Armbrister, the Senate concurred in the House amendment to **SB 1123** by a viva voce vote.

(President in Chair)

SENATE BILL 865 WITH HOUSE AMENDMENT

Senator Staples called **SB 865** 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 865** in Section 1 of the bill, amended Subsection (c), Section 25.25, Tax Code, by striking "shall [~~may~~]" and substituting "may".

The amendment was read.

Senator Staples moved to concur in the House amendment to **SB 865**.

The motion prevailed by the following vote: Yeas 29, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

SENATE BILL 601 WITH HOUSE AMENDMENTS

Senator Carona called **SB 601** 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 601** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to certain investments and rate reductions by insurance companies and related organizations; providing an administrative penalty.

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

SECTION 1. Chapter 4, Insurance Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. PREMIUM TAX CREDIT
FOR INVESTMENT IN
CERTIFIED CAPITAL COMPANY

Art. 4.51. DEFINITIONS. In this subchapter:

(1) "Affiliate" of another person means:

(A) a person who is an affiliate for purposes of Section 2, Article 21.49-1 of this code;

(B) a person who directly or indirectly:

(i) beneficially owns 10 percent or more of the outstanding voting securities or other ownership interests of the other person, whether through rights, options, convertible interests, or otherwise; or

(ii) controls or holds power to vote 10 percent or more of the outstanding voting securities or other ownership interests of the other person;

(C) a person 10 percent or more of the outstanding voting securities or other ownership interests of which are directly or indirectly:

(i) beneficially owned by the other person, whether through rights, options, convertible interests, or otherwise; or

(ii) controlled or held with power to vote by the other person;

(D) a partnership in which the other person is a general partner; or

(E) an officer, director, employee, or agent of the other person, or an immediate family member of the officer, director, employee, or agent.

(2) "Allocation date" means the date on which the certified investors of a certified capital company are allocated certified capital by the comptroller under this subchapter.

(3) "Certified capital" means an investment of cash by a certified investor in a certified capital company that fully funds the purchase price of an equity interest in the company or a qualified debt instrument issued by the certified capital company.

(4) "Certified capital company" means a partnership, corporation, or trust or limited liability company, whether organized on a profit or not-for-profit basis, that has as its primary business activity the investment of cash in qualified businesses and that is certified as meeting the criteria of this subchapter.

(5) "Certified investor" means an insurance company or other person that has state premium tax liability, other than a title insurance company, that contributes certified capital pursuant to an allocation of premium tax credits under this subchapter.

(6) "Early stage business" means a qualified business that satisfies at least one of the following criteria:

(A) is involved, at the time of a certified capital company's first investment, in activities related to the development of initial product or service offerings, such as prototype development or establishment of initial production or service processes;

(B) was initially organized less than two years before the date of the certified capital company's first investment; or

(C) during the fiscal year immediately preceding the year of the certified capital company's first investment had, on a consolidated basis with its affiliates, gross revenues of not more than \$2 million as determined in accordance with generally accepted accounting principles.

(7) "Person" means a natural person or entity, including a corporation, general or limited partnership, or trust or limited liability company.

(8) "Premium tax credit allocation claim" means a claim for allocation of premium tax credits.

(9) "Qualified business" means a business that, at the time of a certified capital company's first investment in the business:

(A) is headquartered in this state and intends to remain in this state after receipt of the investment by the certified capital company;

(B) has its principal business operations located in this state and intends to maintain business operations in this state after receipt of the investment by the certified capital company;

(C) has agreed to use the qualified investment primarily to:

(i) support business operations in this state, other than advertising, promotion, and sales operations which may be conducted outside of this state; or

(ii) in the case of a start-up company, establish and support business operations in this state, other than advertising, promotion, and sales operations which may be conducted outside of this state;

(D) has not more than 100 employees and:

(i) employs at least 80 percent of its employees in this state; or

(ii) pays 80 percent of its payroll to employees in this state;

(E) is primarily engaged in:

(i) manufacturing, processing, or assembling products;

(ii) conducting research and development; or

(iii) providing services; and

(F) is not primarily engaged in:

(i) retail sales;

(ii) real estate development;

(iii) the business of insurance, banking, or lending; or

(iv) the provision of professional services provided by accountants, attorneys, or physicians.

(10) "Qualified debt instrument" means a debt instrument issued by a certified capital company, at par value or a premium, that:

(A) has an original maturity date of at least five years after the date of issuance;

(B) has a repayment schedule that is not faster than a level principal amortization over five years; and

(C) has no interest, distribution, or payment features that are related to the profitability of the certified capital company or the performance of the certified capital company's investment portfolio.

(11) "Qualified distribution" means any distribution or payment from certified capital by a certified capital company in connection with:

(A) the reasonable costs and expenses of forming, syndicating, managing, and operating the company, provided that the distribution or payment is not made directly or indirectly to a certified investor, including:

(i) reasonable and necessary fees paid for professional services, including legal and accounting services, related to the formation and operation of the company; and

(ii) an annual management fee in an amount that does not exceed two and one-half percent of the certified capital of the company; and

(B) any projected increase in federal or state taxes, including penalties and interest related to state and federal income taxes, of the equity owners of the company resulting from the earnings or other tax liability of the company to the extent that the increase is related to the ownership, management, or operation of the company.

(12) "Qualified investment" means the investment of cash by a certified capital company in a qualified business for the purchase of any debt, debt participation, equity, or hybrid security of any nature or description, including a debt instrument or security that has the characteristics of debt but that provides for conversion into equity or equity participation instruments such as options or warrants.

(13) "State premium tax liability" means:

(A) any liability incurred by any person under Subchapter A of this chapter; or

(B) if the tax liability imposed under Subchapter A of this chapter on January 1, 2001, is eliminated or reduced, any tax liability imposed on an insurance company or other person that had premium tax liability under Subchapter A of this chapter on that date.

Art. 4.52. DUTIES OF COMPTROLLER; RULES. The comptroller shall administer this subchapter and may adopt rules and forms as necessary to implement this subchapter.

Art. 4.53. CERTIFICATION. (a) The comptroller by rule shall establish the application procedures for certified capital companies.

(b) An applicant must file an application in the form prescribed by the comptroller accompanied by a nonrefundable application fee of \$7,500. The application must include an audited balance sheet of the applicant, with an unqualified opinion from an independent certified public accountant, as of a date not more than 35 days before the date of the application.

(c) To qualify as a certified capital company:

(1) the applicant must have, at the time of application for certification, an equity capitalization of at least \$500,000 in the form of unencumbered cash or cash equivalents;

(2) at least two principals or persons employed to manage the funds of the applicant must have at least four years of experience in the venture capital industry; and

(3) the applicant must satisfy any additional requirement imposed by the comptroller by rule.

(d) The comptroller shall review the application, organizational documents, and business history of each applicant and shall ensure that the applicant satisfies the requirements of this subchapter.

(e) Not later than the 30th day after the date an application is filed, the comptroller shall:

(1) issue the certification; or

(2) refuse to issue the certification and communicate in detail to the applicant the grounds for the refusal, including suggestions for the removal of those grounds.

Art. 4.54. MANAGEMENT BY CERTAIN ENTITIES PROHIBITED. (a) An insurance company, group of insurance companies, or other persons who may have state premium tax liability or the affiliates of the insurance companies or other persons may not, directly or indirectly:

(1) manage a certified capital company;

(2) beneficially own, whether through rights, options, convertible interests, or otherwise, more than 10 percent of the outstanding voting securities of a certified capital company; or

(3) control the direction of investments for a certified capital company.

(b) Subsection (a) of this article applies without regard to whether the insurance company or other person or the affiliate of the insurance company or other person is licensed by or transacts business in this state.

(c) This article does not preclude a certified investor, insurance company, or any other party from exercising its legal rights and remedies, including interim management of a certified capital company, if authorized by law, with respect to a certified capital company that is in default of its statutory or contractual obligations to the certified investor, insurance company, or other party.

Art. 4.55. OFFERING MATERIAL USED BY CERTIFIED CAPITAL COMPANY. Any offering material involving the sale of securities of the certified capital company must include the following statement:

By authorizing the formation of a certified capital company, the State of Texas does not endorse the quality of management or the potential for earnings of the company and is not liable for damages or losses to a certified investor in the company. Use of the word "certified" in an offering does not constitute a recommendation or endorsement of the investment by the comptroller of public accounts. If applicable provisions of law are violated, the State of Texas may require forfeiture of unused premium tax credits and repayments of used premium tax credits.

Art. 4.56. REQUIREMENTS FOR CONTINUANCE OF CERTIFICATION. (a) To continue to be certified, a certified capital company shall make qualified investments according to the following schedule:

(1) before the third anniversary of its allocation date, a company must have made qualified investments in an amount cumulatively equal to at least 30 percent of its certified capital; and

(2) before the fifth anniversary of its allocation date, a company must have made qualified investments in an amount cumulatively equal to at least 50 percent of its certified capital, subject to Subsection (b) of this article.

(b) At least 50 percent of the amount of qualified investments required by Subsection (a)(2) of this article must be placed in early stage businesses.

(c) The aggregate cumulative amount of all qualified investments made by the certified capital company after its allocation date shall be considered in the computation of the percentage requirements under this subchapter. Any proceeds received from a qualified investment may be invested in another qualified investment and count toward any requirement in this subchapter with respect to investments of certified capital.

(d) A business that is classified as a qualified business at the time of the first investment in the business by a certified capital company remains classified as a qualified business and may receive follow-on investments from any certified capital

company. Except as provided by this subsection, a follow-on investment made under this subsection is a qualified investment even though the business may not meet the definition of a qualified business at the time of the follow-on investment. A follow-on investment does not qualify as a qualified investment if, at the time of the follow-on investment, the qualified business no longer has its principal business operations in this state.

(e) A qualified investment may not be made at a cost to a certified capital company greater than 15 percent of the total certified capital of the company at the time of investment.

(f) If, before the 90th day after the date that a certified capital company makes an investment in a qualified business, the qualified business moves its principal business operations from this state, the investment may not be considered a qualified investment for purposes of the percentage requirements under this subchapter.

(g) A certified capital company shall invest any certified capital not invested in qualified investments only in the following:

(1) cash deposited with a federally insured financial institution;

(2) certificates of deposit in a federally insured financial institution;

(3) investment securities that are obligations of the United States or its agencies or instrumentalities or obligations that are guaranteed fully as to principal and interest by the United States;

(4) debt instruments rated at least "A" or its equivalent by a nationally recognized credit rating organization, or issued by, or guaranteed with respect to payment by, an entity whose unsecured indebtedness is rated at least "A" or its equivalent by a nationally recognized credit rating organization, and which indebtedness is not subordinated to other unsecured indebtedness of the issuer or the guarantor;

(5) obligations of this state or any municipality or political subdivision of this state; or

(6) any other investments approved in advance and in writing by the comptroller.

Art. 4.57. EVALUATION OF BUSINESS BY COMPTROLLER. (a) A certified capital company may, before making an investment in a business, request from the comptroller a written opinion as to whether the business in which it proposes to invest is a qualified business or an early stage business.

(b) The comptroller shall, not later than the 15th business day after the date of the receipt of a request under Subsection (a) of this article, determine whether the business meets the definition of a qualified business or an early stage business, as applicable, and notify the certified capital company of the determination and an explanation of its determination or notify the certified capital company that an additional 15 days will be needed to review and make the determination.

(c) If the comptroller fails to notify the certified capital company with respect to the proposed investment within the period specified by Subsection (b) of this article, the business in which the company proposes to invest is considered to be a qualified business or early stage business, as appropriate.

Art. 4.58. REPORTS TO COMPTROLLER; AUDITED FINANCIAL STATEMENT. (a) Each certified capital company shall report to the comptroller as soon as practicable after the receipt of certified capital:

(1) the name of each certified investor from whom the certified capital was received, including the certified investor's insurance premium tax identification number;

(2) the amount of each certified investor's investment of certified capital and premium tax credits; and

(3) the date on which the certified capital was received.

(b) Not later than January 31 of each year, each certified capital company shall report to the comptroller:

(1) the amount of the company's certified capital at the end of the preceding year;

(2) whether or not the company has invested more than 15 percent of its total certified capital in any one business;

(3) each qualified investment that the company made during the preceding year and, with respect to each qualified investment, the number of employees of the qualified business at the time the qualified investment was made; and

(4) any other information required by the comptroller, including any information required by the comptroller to comply with Article 4.73 of this code.

(c) Not later than April 1 of each year, the company shall provide to the comptroller an annual audited financial statement that includes the opinion of an independent certified public accountant. The audit shall address the methods of operation and conduct of the business of the company to determine whether:

(1) the company is complying with this subchapter and the rules adopted under this subchapter;

(2) the funds received by the company have been invested as required within the time provided by Article 4.56(a) of this code; and

(3) the company has invested the funds in qualified businesses.

Art. 4.59. RENEWAL. (a) Not later than January 31 of each year, each certified capital company shall pay a nonrefundable renewal fee of \$5,000 to the comptroller. If a certified capital company fails to pay its renewal fee on or before that date, the company must pay, in addition to the renewal fee, a late fee of \$5,000 to continue its certification.

(b) Notwithstanding Subsection (a) of this article, a renewal fee is not required within six months of the date on which the company's certification is issued under Article 4.53 of this code.

Art. 4.60. DISTRIBUTIONS; REPAYMENT OF DEBT. (a) A certified capital company may make a qualified distribution at any time. To make a distribution or payment, other than a qualified distribution, a company must have made qualified investments in an amount cumulatively equal to 100 percent of its certified capital.

(b) Notwithstanding Subsection (a) of this article, a company may make repayments of principal and interest on its indebtedness without any restriction, including repayments of indebtedness of the company on which certified investors earned premium tax credits.

(c) If a business in which a qualified investment is made relocates its principal business operations to another state during the term of the certified capital company's investment in the business, the cumulative amount of qualified investments made by the certified capital company for purposes of satisfying the requirements of Subsection (a) of this article only is reduced by the amount of the certified capital company's qualified investments in the business that has relocated. This subsection

does not apply if the business demonstrates that it has returned its principal business operations to this state not later than the 90th day after the date of its relocation.

Art. 4.61. ANNUAL REVIEW; DECERTIFICATION. (a) The comptroller shall conduct an annual review of each certified capital company to:

(1) ensure that the company continues to satisfy the requirements of this subchapter and that the company has not made any investment in violation of this subchapter; and

(2) determine the eligibility status of its qualified investments.

(b) The cost of the annual review shall be paid by each certified capital company according to a reasonable fee schedule adopted by the comptroller.

(c) A material violation of Article 4.56, 4.58, or 4.59 of this code is grounds for decertification of the certified capital company. If the comptroller determines that a company is not in compliance with Article 4.56, 4.58, or 4.59 of this code, the comptroller shall notify the officers of the company in writing that the company may be subject to decertification after the 120th day after the date of mailing of the notice, unless the deficiencies are corrected and the company returns to compliance with those articles.

(d) The comptroller may decertify a certified capital company, after opportunity for hearing, if the comptroller finds that the company is not in compliance with Article 4.56, 4.58, or 4.59 of this code at the end of the period established by Subsection (c) of this article. Decertification under this subsection is effective on receipt of notice of decertification by the company. The comptroller shall notify any appropriate state agency of the decertification.

Art. 4.62. ADMINISTRATIVE PENALTY. (a) The comptroller may impose an administrative penalty on a certified capital company that violates this subchapter.

(b) The amount of the penalty may not exceed \$25,000, and each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(c) Certified capital companies assessed penalties under this subchapter may request a redetermination as provided in Chapter 111, Tax Code.

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

(e) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Art. 4.63. RECAPTURE AND FORFEITURE OF PREMIUM TAX CREDITS: DECERTIFICATION OF COMPANY. (a) Decertification of a certified capital company may cause the recapture of premium tax credits previously claimed and the forfeiture of future premium tax credits to be claimed by certified investors with respect to the company, as follows:

(1) decertification of a company on or before the third anniversary of its allocation date causes the recapture of any premium tax credit previously claimed and the forfeiture of any future premium tax credit to be claimed by a certified investor with respect to the company;

(2) for a company that meets the requirements for continued certification under Article 4.56(a)(1) of this code and subsequently fails to meet the requirements for continued certification under Article 4.56(a)(2) of this code, any premium tax credit that has been or will be taken by a certified investor on or before the third anniversary of the allocation date is not subject to recapture or forfeiture, but any premium tax credit that has been or will be taken by a certified investor after the third anniversary of the allocation date of the company is subject to recapture or forfeiture;

(3) for a company that has met the requirements for continued certification under Articles 4.56(a)(1) and (2) of this code and is subsequently decertified, any premium tax credit that has been or will be taken by a certified investor on or before the fifth anniversary of the allocation date is not subject to recapture or forfeiture, but any premium tax credit to be taken after the fifth anniversary of the allocation date is subject to forfeiture only if the company is decertified on or before the fifth anniversary of its allocation date; and

(4) for a company that has invested an amount cumulatively equal to 100 percent of its certified capital in qualified investments, any premium tax credit claimed or to be claimed by a certified investor is not subject to recapture or forfeiture under this article.

(b) The comptroller shall send written notice to the address of each certified investor whose premium tax credit is subject to recapture or forfeiture, using the address shown on the last premium tax filing.

Art. 4.64. INDEMNITY AGREEMENTS AND INSURANCE AUTHORIZED. A certified capital company may agree to indemnify, or purchase insurance for the benefit of, a certified investor for losses resulting from the recapture or forfeiture of premium tax credits under Article 4.63 of this code. Any guaranty, indemnity, bond, insurance policy, or other payment undertaking made under this article may not be provided by more than one certified investor of the certified capital company or affiliate of the certified investor.

Art. 4.65. PREMIUM TAX CREDIT. (a) A certified investor who makes an investment of certified capital shall in the year of investment earn a vested credit against state premium tax liability equal to 100 percent of the certified investor's investment of certified capital, subject to the limits imposed by this subchapter. A certified investor may take up to 10 percent of the vested premium tax credit in any taxable year of the certified investor.

(b) The credit to be applied against state premium tax liability in any one year may not exceed the state premium tax liability of the certified investor for the taxable year. Any unused credit against state premium tax liability may be carried forward indefinitely until the premium tax credits are used.

(c) A certified investor claiming a credit against state premium tax liability earned through an investment in a company is not required to pay any additional retaliatory tax levied under Article 21.46 of this code as a result of claiming that credit. An investment made under this subchapter is a "Texas investment" for purposes of Subchapter A of this chapter.

Art. 4.66. PREMIUM TAX CREDIT ALLOCATION CLAIM FORM. (a) A premium tax credit allocation claim must be prepared and executed by a certified investor on a form provided by the comptroller. The certified capital company must file the claim with the comptroller not later than February 15, 2002. The premium tax credit allocation claim form must include an affidavit of the certified investor under which the certified investor becomes legally bound and irrevocably committed to

make an investment of certified capital in a certified capital company in the amount allocated even if the amount allocated is less than the amount of the claim, subject only to the receipt of an allocation under Article 4.68 of this code.

(b) A certified investor may not claim a premium tax credit under Article 4.65 of this code for an investment that has not been funded, even if the certified investor has committed to fund the investment.

Art. 4.67. TOTAL LIMIT ON CREDITS. (a) The total amount of certified capital for which premium tax credits may be allowed under this subchapter for all years in which premium tax credits are allowed is \$200 million.

(b) The total amount of certified capital for which premium tax credits may be allowed for all certified investors under this subchapter may not exceed the amount that would entitle all certified investors in certified capital companies to take total credits of \$20 million in a year.

(c) A certified capital company and its affiliates may not file premium tax credit allocation claims in excess of the maximum amount of certified capital for which premium tax credits may be allowed as provided in this article.

Art. 4.68. PRO RATA ALLOCATION OF CREDITS. (a) If the total premium tax credits claimed by all certified investors exceeds the total limits on premium tax credits established by Article 4.67(a) of this code, the comptroller shall allocate the total amount of premium tax credits allowed under this subchapter to certified investors in certified capital companies on a pro rata basis in accordance with this article.

(b) The pro rata allocation for each certified investor shall be the product of:

(1) a fraction, the numerator of which is the amount of the premium tax credit allocation claim filed on behalf of the investor and the denominator of which is the total amount of all premium tax credit allocation claims filed on behalf of all certified investors; and

(2) the total amount of certified capital for which premium tax credits may be allowed under this subchapter.

(c) Not later than March 1, 2002, the comptroller shall notify each certified capital company of the amount of tax credits allocated to each certified investor. Each certified capital company shall notify each certified investor of their premium tax credit allocation.

(d) If a certified capital company does not receive an investment of certified capital equaling the amount of premium tax credits allocated to a certified investor for which it filed a premium tax credit allocation claim before the end of the 10th business day after the date of receipt of notice of allocation, the company shall notify the comptroller by overnight common carrier delivery service and that portion of capital allocated to the certified investor shall be forfeited. The comptroller shall reallocate the forfeited capital among the certified investors in the other certified capital companies that originally received an allocation so that the result after reallocation is the same as if the initial allocation under this article had been performed without considering the premium tax credit allocation claims that were subsequently forfeited.

(e) The maximum amount of certified capital for which premium tax credit allocation may be allowed on behalf of any one certified investor and its affiliates, whether by one or more certified capital companies, may not exceed the greater of:

(1) \$10 million; or

(2) 15 percent of the maximum aggregate amount available under Article 4.67(a) of this code.

Art. 4.69. TREATMENT OF CREDITS AND CAPITAL. In any case under this code or another insurance law of this state in which the assets of a certified investor are examined or considered, the certified capital may be treated as an admitted asset, subject to the applicable statutory valuation procedures.

Art. 4.70. IMPACT OF TAX CREDITS CLAIMED BY A CERTIFIED INVESTOR ON INSURANCE RATES. A certified investor is not required to reduce the amount of premium tax included by the investor in connection with ratemaking for any insurance contract written in this state because of a reduction in the investor's Texas premium tax derived from the credit granted under this subchapter.

Art. 4.71. TRANSFERABILITY OF CREDIT. (a) The comptroller shall adopt rules to facilitate the transfer or assignment of premium tax credits by certified investors. A certified investor may transfer or assign premium tax credits only in compliance with the rules adopted under this subsection.

(b) The transfer or assignment of a premium tax credit does not affect the schedule for taking the premium tax credit under this subchapter.

Art. 4.72. PROMOTION. The Texas Department of Economic Development shall promote the program established under this subchapter in the Texas Business and Community Economic Development Clearinghouse.

Art. 4.73. REPORT TO LEGISLATURE. (a) The comptroller shall prepare a biennial report with respect to results of the implementation of this subchapter. The report must include:

(1) the number of certified capital companies holding certified capital;

(2) the amount of certified capital invested in each certified capital company;

(3) the amount of certified capital the certified capital company has invested in qualified businesses as of January 1, 2004, and the cumulative total for each subsequent year;

(4) the total amount of tax credits granted under this subchapter for each year that credits have been granted;

(5) the performance of each certified capital company with respect to renewal and reporting requirements imposed under this subchapter;

(6) with respect to the qualified businesses in which certified capital companies have invested:

(A) the classification of the qualified businesses according to the industrial sector and the size of the business;

(B) the total number of jobs created by the investment and the average wages paid for the jobs; and

(C) the total number of jobs retained as a result of the investment and the average wages paid for the jobs; and

(7) the certified capital companies that have been decertified or that have failed to renew the certification and the reason for any decertification.

(b) The comptroller shall file the report with the governor, the lieutenant governor, and the speaker of the house of representatives not later than December 15 of each even-numbered year.

Art. 4.74. IMPLEMENTATION SUBJECT TO AVAILABLE REVENUE. (a) Notwithstanding any other provision of this subchapter, the comptroller may implement this subchapter only if the comptroller determines, on the basis of a revenue estimate made after the adjournment sine die of the regular session of the 77th

Legislature, that revenues are anticipated in amounts sufficient to finance all appropriations made during the regular session of the 77th Legislature, after making deductions for all reductions in taxes, including the reduction in premium tax through premium tax credits authorized under this subchapter.

(b) If the comptroller determines under Subsection (a) of this article that revenues are anticipated to support a part, but less than all, of the premium tax credits authorized under Article 4.67 of this code, the comptroller shall:

(1) reduce the total amount of premium tax credits allowed under that article in the amount necessary to comply with Subsection (a) of this article; and

(2) adopt rules as necessary to implement this subchapter after the reduction made under Subdivision (1) of this subsection.

(c) Rules adopted under Subsection (b)(2) of this article may adjust any deadline or other date established by this subchapter as necessary to implement this subchapter as limited by this article.

(d) The comptroller shall notify the governor, lieutenant governor, and speaker of the house of representatives of the determination made under Subsection (a) of this article.

SECTION 2. Articles 4.01 through 4.08, 4.10, 4.11, 4.11A, 4.11B, 4.11C, 4.12, and 4.17, 4.18, and 4.19, Insurance Code, are redesignated as Subchapter A, Chapter 4, Insurance Code, and a subchapter heading is added to read as follows:

SUBCHAPTER A. IMPOSITION AND
COLLECTION OF TAXES AND FEES

SECTION 3. (a) Subject to Article 4.74, Insurance Code, as added by this Act, the comptroller of public accounts shall, not later than the 60th day after the effective date of this Act, adopt rules necessary to implement Subchapter B, Chapter 4, Insurance Code, as added by this Act. The comptroller shall begin accepting applications for certification as a certified capital company under that subchapter on November 1, 2001.

(b) A certified investor may not make an investment with a certified capital company under Subchapter B, Chapter 4, Insurance Code, as added by this Act, before February 15, 2002.

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.

Floor Amendment No. 1

(1) Amend **CSSB 601** by deleting the word "ownership" on page 1, lines 16, 21, and 23 and substituting therefor the words "voting or management."

(2) Amend **CSSB 601** by adding a new section (d) on page 10, line 5 and renumber subsequent sections appropriately to read as follows:

(d) Nothing in this subchapter shall limit an insurance company's ownership of nonvoting equity interests in a certified capital company.

Floor Amendment No. 2

Amend **CSSB 601** (House committee printing) as follows:

(1) In Article 4.51, Insurance Code, as added by SECTION 1 of the bill, following Subdivision (13) (page 6, between lines 22 and 23), insert the following:

(14) "Strategic investment area" means an area of this state that qualifies as a strategic investment area under Subchapter O, Chapter 171, Tax Code, or, after the expiration of that subchapter, an area that qualified as a strategic investment area under that subchapter immediately before its expiration.

(15) "Strategic investment business" means a qualified business that has its principal business operations located in one or more strategic investment areas and intends to maintain business operations in the strategic investment areas after receipt of the investment by the certified capital company.

(2) In Article 4.56, Insurance Code, as added by SECTION 1 of the bill, at the end of Subsection (b) (page 9, line 24), insert the following: "At least 30 percent of the amount of qualified investments required by Subsection (a)(1) and (2) of this article must be placed in a strategic investment business."

(3) In Article 4.57, Insurance Code, as added by SECTION 1 of the bill, in Subsection (a) (page 11, line 24), strike "or an early stage business" and substitute ", an early stage business, or a strategic investment business".

(4) In Article 4.57, Insurance Code, as added by SECTION 1 of the bill, in Subsection (b) (page 12, line 1), strike "or an early stage business" and substitute ", an early stage business, or a strategic investment business".

(5) In Article 4.57, Insurance Code, as added by SECTION 1 of the bill, in Subsection (c) (page 12, line 10), strike "or an early stage business" and substitute ", an early stage business, or a strategic investment business".

The amendments were read.

Senator Carona moved to concur in the House amendments to **SB 601**.

The motion prevailed by the following vote: Yeas 29, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

SENATE BILL 221 WITH HOUSE AMENDMENT

Senator Staples called **SB 221** 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 221** as follows:

(1) Immediately before SECTION 8 of the bill (page 6, between lines 7 and 8, Senate Engrossment) insert the following appropriately numbered SECTIONS:

SECTION _____. Section 36.067, Water Code, is amended by adding Subsection (c) to read as follows:

(c) A district may use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing.

SECTION _____. Section 49.273, Water Code, is amended by adding Subsection (k) to read as follows:

(k) The board may use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing.

SECTION _____. Section 23, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended by adding Subsection (e) to read as follows:

(e) A corporation may use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing.

(2) Strike SECTION 8 of the bill (page 6, lines 8-17, Senate Engrossment) and substitute the following appropriately numbered SECTION:

SECTION _____. (a) The changes in law made by this Act apply only to a contract for which requests for bids, proposals, or other applicable notice of an intent to contract are published or distributed on or after the effective date of this Act.

(b) 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 Staples moved to concur in the House amendment to **SB 221**.

The motion prevailed by the following vote: Yeas 29, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

COMMITTEE SUBSTITUTE SENATE BILL 824 ON SECOND READING

On motion of Senator Truan 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 824, Relating to dual literacy programs in public schools.

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

COMMITTEE SUBSTITUTE SENATE BILL 824 ON THIRD READING

Senator Truan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 824** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0, Present-not voting 1. (Same as previous roll call)

SENATE BILL 488 ON THIRD READING

Senator Harris asked unanimous consent to suspend the regular order of business to take up for consideration at this time on its third reading and final passage:

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 21, 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, Wentworth.

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

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

The bill was read third time and was passed by the following vote: Yeas 22, Nays 8.

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

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

Absent-excused: Van de Putte.

GUESTS PRESENTED

Senator Barrientos was recognized and introduced to the Senate Perla Sandoval and Jose Zamora, who were serving today as Honorary Senate Pages, accompanied by Veronica Sharp, Principal of Brown Elementary School in Austin, and Iona Jaimes, Assistant Principal.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate the following delegation from Starr County: commissioners Abel Gonzalez and Jaime Alvarez; Treasurer David Porras; Rio Grande City Mayor Pro Tempore Manuel Canales; aldermen Ricardo Gutierrez, Juan De Luna, and Ruben Saenz; City Administrator Leo Olivares; President of The University of Texas—Pan American Dr. Miguel A. Nevarez; Associate Director for Economic Development Sofia Hernandez; Dr. Ramiro Casso and Dr. Baltazar Cisneros of South Texas Community College; and students Alex Garcia, Blanca Garza, Olga Gonzalez, Debora de Lano, Oscar Flores, David Ochoa, and Abel Garza.

The Senate welcomed its guests.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2531 ON SECOND READING**

On motion of Senator Bivins 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 2531, Relating to tuition and fees charged at public institutions of higher education.

The bill was read second time.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 2531**, page _____, line _____, by inserting the following new section and renumbering accordingly:

SECTION _____. Section 54.008, Education Code, is amended by amending Subsections (a) and (f) and adding Subsection (g) to read as follows:

(a) The tuition rates provided by Subchapter B of this chapter are minimum rates. Except as provided by Subsections ~~Subsection~~ (e), (f), and (g), the governing board of each institution of higher education shall set tuition for graduate programs for that institution at a rate that is at least equal to that prescribed by Subchapter B ~~[of this chapter]~~, but that is not more than twice the rate prescribed by Subchapter B ~~[of this chapter]~~. Between the maximum and minimum rates, the board may set the differential tuition among programs offered by an institution of higher education.

(f) The governing board of an institution of higher education shall set tuition for an undergraduate pharmacy program at the institution at a rate that is at least equal to the rate prescribed by Subchapter B ~~[of this chapter]~~ but not more than twice the rate prescribed by Subchapter B ~~[of this chapter]~~. The governing board of an institution of higher education shall set tuition for a graduate or professional pharmacy program at the institution at a rate that is at least equal to the rate prescribed by Subchapter B but not more than three times the rate prescribed by Subchapter B.

(g) The governing board of an institution of higher education shall set tuition for a law school at the institution at a rate that is at least equal to the rate prescribed by Subchapter B but not more than three times the rate prescribed by Subchapter B.

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

RECORD OF VOTES

Senators Barrientos, Shapleigh, Truan, and Zaffirini asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 1.

On motion of Senator Bivins and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

CSHB 2531 as amended was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Barrientos, Shapleigh, Truan, and Zaffirini asked to be recorded as voting "Nay" on the passage of **CSHB 2531** to third reading.

**COMMITTEE SUBSTITUTE
SENATE BILL 1128 ON SECOND READING**

On motion of Senator Bernsen 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 1128, Relating to landscaping and billboards along highways; imposing a civil penalty.

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

**COMMITTEE SUBSTITUTE
SENATE BILL 1128 ON THIRD READING**

Senator Bernsen moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1128** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

(Senator Brown in Chair)

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Armbrister, Duncan, and Fraser asked to be recorded as voting "Nay" on the final passage of **CSSB 1128**.

BILL AND RESOLUTIONS SIGNED

The President announced the signing of the following enrolled bill and resolutions in the presence of the Senate after the captions had been read:

HB 1467, HCR 50, HCR 111, HCR 112, HCR 113, HCR 268, HCR 280, HJR 45.

SENATE RESOLUTION 1026

Senator Ogden offered the following resolution:

WHEREAS, The Senate of the State of Texas is proud to recognize the City of Taylor on the grand occasion of its 125th anniversary, which is being celebrated June 8 through 10, 2001; and

WHEREAS, Founded in 1876 as a railroad town, Taylor was originally named Taylorsville for Moses Taylor, an executive of the International and Great Northern Railroad; early Taylor settlers were railroad officials, such as John R. Hoxie and Henry Dickson, and merchants such as C. P. Vance, who moved his general store from Circleville; and

WHEREAS, The Texas Land Company advertised the sale of town lots in Taylorsville and encouraged commercial businesses and churches to be erected; the

first bank in Taylor was owned by Miller Brothers and Robertson but was soon closed, and in 1883, the First National Bank opened for business; the Taylor Savings and Loan Association started business in 1885, and the City National Bank of Taylor opened in 1900; and

WHEREAS, Taylorsville became home to Methodist and Presbyterian churches and soon became a major shipping point for cattle; in 1882, a second rail line, the Missouri, Kansas & Texas was extended to Taylorsville, and that same year, the town was incorporated, and Daniel Moody, the father of Governor Dan Moody, served as its first mayor; and

WHEREAS, Some of the early hotels and boarding houses included the T. J. Kamp Hotel, located on the corner of West Main and First streets, the Napier Hotel, located on the present site of the Taylor Hardware Company, and the Minor Hotel, located on the site of T. W. Morse Company; and

WHEREAS, In 1892, the city's name was shortened to Taylor, and by that time, cotton had joined cattle and the railroad as an important element in the local economy; and

WHEREAS, At one time, Taylor had a street car line owned by Dr. A. V. Doak, and by 1900, newsworthy items in the town papers included a water line from the San Gabriel River, a 100-man volunteer department, and a yearly fair; and

WHEREAS, Taylor continued to grow during the early years of the 20th Century; home to such recognized people as Governor Dan Moody and Rip Torn, Taylor has produced highly successful schoolteachers, lawyers, farmers, ranchers, doctors, and politicians; by 1940, the town had 7,875 residents and 225 businesses; in 1983, interest in downtown revitalization resulted in the hiring of a Main Street project manager and restoration work began; and

WHEREAS, By 1990, the population of Taylor was 11,472, and today Taylor is well known for offering a quieter way of life than the big cities; it is also known as home to the Taylor Ducks and as host to such popular events as rodeos, rattlesnake round-ups, and barbecues; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 77th Legislature, hereby commend the citizens of Taylor for preserving the amenities and charm of their city and extend best wishes to them on the grand occasion of Taylor's 125th anniversary; and, be it further

RESOLVED, That a copy of this Resolution be prepared for Taylor citizens as an expression of 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 Ogden, the resolution was adopted by a viva voce vote.

GUESTS PRESENTED

Senator Ogden was recognized and introduced to the Senate Taylor's 125th anniversary committee: Fred Switzer, Ella Pumphrey Jez, Leah Hicks, Irene Michna, and Doyle "Dee" Hobbs, Jr., accompanied by a delegation of citizens from the City of Taylor.

The Senate welcomed its guests.

**COMMITTEE SUBSTITUTE
SENATE BILL 1176 ON SECOND READING**

On motion of Senator Gallegos 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 1176, Relating to certain nondisciplinary actions against certain police officers and to the records of overturned disciplinary actions or charges of misconduct against certain firefighters and police officers.

The bill was read second time.

Senator Gallegos offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 1176** Section 1 on page 1, line 63 through page 2, line 8 by striking subsection (d).

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

On motion of Senator Gallegos and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

CSSB 1176 as amended was passed to engrossment by a viva voce vote.

RECORD OF VOTE

Senator Ogden asked to be recorded as voting "Nay" on the passage of **CSSB 1176** to engrossment.

**COMMITTEE SUBSTITUTE
SENATE BILL 1176 ON THIRD READING**

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1176** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1, Present-not voting 1.

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

Nays: Ogden.

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Ogden asked to be recorded as voting "Nay" on the final passage of **CSSB 1176**.

HOUSE BILL 2255 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:

HB 2255, Relating to the continuation and functions of the State Securities Board; providing penalties.

The bill was read second time.

Senator Harris offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 2255** in Section 33-1, The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes, as added by Section 3.17 of the bill (page 33, between lines 3 and 4), by adding a new Subsection F to read as follows:

F. A remedy provided by this section is not exclusive of any other applicable remedy provided by law.

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

On motion of Senator Harris and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

CSHB 2255 as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE**HOUSE JOINT RESOLUTION 97 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:

CSHJR 97, Proposing a constitutional amendment authorizing the issuance of general obligation bonds for construction and repair projects and for the purchase of needed equipment.

The resolution was read second time and was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE**HOUSE JOINT RESOLUTION 97 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 **CSHJR 97** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

The resolution was read third time and was passed by the following vote: Yeas 29, Nays 0, Present-not voting 1. (Same as previous roll call)

HOUSE BILL 1351 ON SECOND READING

On motion of Senator Armbrister 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 1351, Relating to the funding and operation of the universal service fund.

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

HOUSE BILL 1351 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1351** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 1684 ON SECOND READING

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

HB 1684, Relating to certain charges that may be included in a retail installment agreement.

There was objection.

Senator Carona then moved to suspend the regular order of business and take up **HB 1684** for consideration at this time.

The motion prevailed by the following vote: Yeas 25, Nays 3, Present-not voting 1.

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

Nays: Barrientos, Shapleigh, West.

Present-not voting: Mr. President.

Absent: Duncan.

Absent-excused: Van de Putte.

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

RECORD OF VOTES

Senators Barrientos, Shapleigh, and West asked to be recorded as voting "Nay" on the passage of **HB 1684** to third reading.

HOUSE BILL 1684 ON THIRD READING

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1684** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 3, Present-not voting 1.

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

Nays: Barrientos, Shapleigh, West.

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

The bill was read third time and was passed by the following vote: Yeas 25, Nays 4, Present-not voting 1.

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

Nays: Barrientos, Gallegos, Shapleigh, West.

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

(President in Chair)

HOUSE BILL 2071 ON SECOND READING

On motion of Senator Haywood 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 2071, Relating to establishing a billing procedure to ensure that each state agency is billed for the cost of support services allocated to the agency under the statewide cost allocation plan.

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

HOUSE BILL 2071 ON THIRD READING

Senator Haywood moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2071** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Barrientos asked to be recorded as voting "Nay" on the final passage of **HB 2071**.

MESSAGE FROM THE HOUSE**HOUSE CHAMBER**

Austin, Texas

May 15, 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:

SCR 60, Extending condolences to the family of John V. McMillan.

THE HOUSE HAS CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 10 (viva-voce vote)

HB 391 (viva-voce vote)

HB 467 (141 Ayes, 0 Nays, 1 Present Not Voting)

HB 899 (viva-voce vote)

HB 1066 (viva-voce vote)

HB 1103 (147 Ayes, 0 Nays, 1 Present Not Voting)

HB 1265 (viva-voce vote)

HB 1466 (viva-voce vote)

HB 1641 (143 Ayes, 0 Nays, 1 Present Not Voting)

HB 1687 (144 Ayes, 0 Nays, 1 Present Not Voting)

HB 1833 (viva-voce vote)

HB 1891 (viva-voce vote)

HB 2258 (viva-voce vote)

HB 2345 (viva-voce vote)

HB 2384 (136 Ayes, 0 Nays, 1 Present Not Voting)

HB 3450 (viva-voce vote)

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

HOUSE BILL 651 ON SECOND READING

On motion of Senator Haywood 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 651, Relating to the operation of certain all-terrain vehicles on public streets, roads, and highways.

The bill was read second time.

Senator Haywood offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 651** on page 1, after line 24, by adding the following:

(4) Provision of the Texas Transportation Code regarding helmet and eye protection use, safety certification, and other vehicular restrictions do not apply to this subsection.

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

Senator Duncan offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 651** as follows:

Starting on page 1, line 24, strike Subsection (d) and replace with the following:

"(d) the operator of an all-terrain vehicle may drive the vehicle on a public street, road, or highway that is not an interstate or limited-access highway if:

(1) the transportation is in connection with the production, cultivation, care, harvesting, preserving, drying, processing, canning, storing, handling, shipping, marketing, selling, or use of agricultural products, as defined by Section 52.002, Agriculture Code;

(2) the operator attaches to the back of the vehicle on top of an eight foot long pole a triangular orange flag;

(3) the vehicle's headlights and taillights are illuminated; and

(4) the operator holds a driver's license, as defined by Section 521.001."

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

On motion of Senator Haywood and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

HB 651 as amended was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Barrientos asked to be recorded as voting "Nay" on the passage of **HB 651** to third reading.

HOUSE BILL 1994 ON SECOND READING

On motion of Senator Carona 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 1994, Relating to certain charges included in a retail installment agreement.

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

RECORD OF VOTE

Senator Haywood asked to be recorded as voting "Nay" on the passage of **HB 1994** to third reading.

HOUSE BILL 1994 ON THIRD READING

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1994** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1, 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, Staples, Truan, Wentworth, West, Whitmire, Zaffirini.

Nays: Haywood.

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 1, Present-not voting 1. (Same as previous roll call)

**COMMITTEE SUBSTITUTE
HOUSE BILL 695 ON THIRD 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 third reading and final passage:

CSHB 695, Relating to the regulation of certain occupations by the Texas Real Estate Commission; providing penalties.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 1027 ON SECOND READING

On motion of Senator Brown 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 1027, Relating to the cleanup of contaminated property.

The bill was read second time.

Senator Brown offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 1027** (Senate Committee Printing) as follows:

(1) In SECTION 2 of the bill, in proposed Subsection (t), Section 4A, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) (page 1, line 40), add the following after the period:

A corporation created under this section may use proceeds from the sales and use tax to undertake the cleanup of contaminated property only if the use of tax proceeds for that purpose is authorized by a majority of the qualified voters of the city voting in an election called and held for that purpose. The ballot in an election held under this

subsection shall be printed to provide for voting for or against the proposition: "The use of sales and use tax proceeds for the cleanup of contaminated property."

(2) In SECTION 3 of the bill, in proposed Subsection (p), Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) (page 1, line 47), add the following after the period:

Notwithstanding any other provision of this section, a corporation created under this section may use proceeds from the sales and use tax to undertake the cleanup of contaminated property only if the use of tax proceeds for that purpose is authorized by a majority of the qualified voters of the city voting in an election called and held for that purpose. The ballot in an election held under this subsection shall be printed to provide for voting for or against the proposition: "The use of sales and use tax proceeds for the cleanup of contaminated property."

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

On motion of Senator Brown and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

HB 1027 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 689 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 third reading:

HB 689, Relating to the jurisdiction of statutory probate courts and to conforming procedures for transferring juvenile proceedings to certain courts.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 689** in SECTION 3 of the bill (committee printing page 1, line 51), by striking "25.0633(c)".

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.

HB 689 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 178 ON SECOND READING

On motion of Senator West 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 178, Relating to longevity pay for certain assistant prosecutors.

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

HOUSE BILL 178 ON THIRD READING

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 178** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

The bill was read third time and was passed by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1981 ON SECOND READING

On motion of Senator Lindsay 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 1981, Relating to competitive purchasing procedures applying to certain purchases and contracts of governmental entities.

The bill was read second time.

Senator Lindsay offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 1981** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION _____. Subchapter C, Chapter 252, Local Government Code, is amended by adding Section 252.0415 to read as follows:

Sec. 252.0415. PROCEDURES FOR ELECTRONIC BIDS OR PROPOSALS.
(a) A municipality may receive bids or proposals under this chapter through electronic transmission if the governing body of the municipality adopts rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time.

(b) Notwithstanding any other provision of this chapter, an electronic bid or proposal is not required to be sealed. A provision of this chapter that applies to a sealed bid or proposal applies to a bid or proposal received through electronic transmission in accordance with the rules adopted under Subsection (a).

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

On motion of Senator Lindsay and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

CSHB 1981 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 805 ON SECOND READING

On motion of Senator Brown 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 805, Relating to the percentage of money received by a crime stoppers organization that may be used for administrative costs.

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

HOUSE BILL 805 ON THIRD READING

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 805** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 1047 ON SECOND READING

On motion of Senator Armbrister 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 1047, Relating to the authority of electric cooperative corporations to receive indemnity from certain persons involved in mining lignite.

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

HOUSE BILL 1047 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1047** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0, Present-not voting 1. (Same as previous roll call)

HOUSE BILL 1768 ON SECOND READING

On motion of Senator Sibley 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 1768, Relating to clarifications in finance law and regulatory authority and efficient administration by the Finance Commission of Texas and the Texas Department of Banking; providing penalties.

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

HOUSE BILL 1768 ON THIRD READING

Senator Sibley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1768** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 688 ON SECOND READING

On motion of Senator Whitmire 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 688, Relating to the sale, possession, or consumption of alcoholic beverages near a private or parochial school.

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

HOUSE BILL 688 ON THIRD READING

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 688** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0, Present-not voting 1. (Same as previous roll call)

HOUSE BILL 3572 ON SECOND READING

On motion of Senator Lindsay 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 3572, Relating to establishing an unrelated donor umbilical cord blood bank.

The bill was read second time.

Senator Lindsay offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 3572** as follows:

(1) Following SECTION 2 of the bill (Senate committee printing, page 1, between lines 44 and 45), insert the following new SECTION 3:

SECTION 3. ONE-TIME GRANT ONLY. The grant authorized by this Act shall be awarded in the fiscal biennium beginning September 1, 2001, and may not be awarded in subsequent bienniums.

(2) Renumber SECTIONS of the bill accordingly.

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

On motion of Senator Lindsay and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

HB 3572 as amended was passed to third reading by a viva voce vote.

HOUSE JOINT RESOLUTION 75 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 75, Proposing a constitutional amendment to eliminate obsolete, archaic, redundant, and unnecessary provisions and to clarify, update, and harmonize certain provisions of the Texas Constitution.

The resolution was read second time.

Senator Duncan offered the following amendment to the resolution:

Floor Amendment No. 1

Amend **HJR 75** (Senate Committee Printing) as follows:

(1) Strike SECTION 2.12 (on page 7, lines 27-42), amending Section 18, Article V, Texas Constitution, and substitute the following:

SECTION 2.12. Sections 18(e) and (f), Article V, Texas Constitution, are amended to read as follows:

(e) The office of Constable is abolished in Mills County, Reagan County, and Roberts County [~~is abolished~~]. The powers, duties, and records of the office are transferred to the County Sheriff.

(f) The Commissioners Court of Lubbock County or the Commissioners Court of Howard County may call an election on the question of whether the office of constable in the county should be abolished. If the commissioners court calls an election under this subsection, the court shall order the ballot for the election to be printed to permit voting for or against the proposition: "Abolition of the office of constable in _____ County." The name of the applicable county shall be inserted into the blank space. If the majority of voters of the county voting on the proposition at the election approve the proposition, the office of constable in the county is abolished, and the powers, duties, and records of each constable's office are transferred to the county sheriff. [~~The office of Constable in Reagan County and the office of Constable in Roberts County are abolished. The functions of the office are transferred to the County Sheriff. However, the office of Constable is abolished under this subsection only if, at the statewide election at which the constitutional amendment providing for the abolition is submitted to the voters, a majority of the voters of Reagan County or Roberts County, as applicable, voting on the question at that election favor the amendment.~~]

(2) Strike SECTION 9.02 (page 12, lines 18-24) and substitute the following:

SECTION 9.02. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2001. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment to eliminate obsolete, archaic, redundant, and unnecessary provisions and to clarify, update, and harmonize certain provisions of the Texas Constitution, and to authorize the abolition of the office of constable in Lubbock and Howard counties."

The amendment was read.

Senator Shapiro moved to table Floor Amendment No. 1.

The motion to table was lost by the following vote: Yeas 14, Nays 14, Present-not voting 1.

Yeas: Barrientos, Bernsen, Gallegos, Harris, Haywood, Jackson, Lindsay, Madla, Nelson, Shapiro, Shapleigh, Truan, Whitmire, Zaffirini.

Nays: Armbrister, Bivins, Brown, Cain, Duncan, Ellis, Fraser, Lucio, Moncrief, Ogden, Sibley, Staples, Wentworth, West.

Present-not voting: Mr. President.

Absent: Carona.

Absent-excused: Van de Putte.

Question recurring on the adoption of Floor Amendment No. 1, the amendment failed of adoption by the following vote: Yeas 13, Nays 16, Present-not voting 1.

Yeas: Armbrister, Bivins, Brown, Cain, Duncan, Ellis, Fraser, Moncrief, Ogden, Sibley, Staples, Wentworth, West.

Nays: Barrientos, Bernsen, Carona, Gallegos, Harris, Haywood, Jackson, Lindsay, Lucio, Madla, Nelson, Shapiro, Shapleigh, Truan, Whitmire, Zaffirini.

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

HJR 75 was passed to third reading by a viva voce vote.

HOUSE JOINT RESOLUTION 75 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 75** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1, Present-not voting 1.

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

Nelson, Ogden, Shapiro, Shapleigh, Sibley, Staples, Truan, Wentworth, West, Whitmire, Zaffirini.

Nays: Lucio.

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

The resolution was read third time and was passed by the following vote: Yeas 28, Nays 1, Present-not voting 1. (Same as previous roll call)

(Senator Sibley in Chair)

**COMMITTEE SUBSTITUTE
HOUSE BILL 915 ON SECOND READING**

On motion of Senator Moncrief 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 915, Relating to bulk purchasing of prescription drugs by certain state agencies.

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

**COMMITTEE SUBSTITUTE
HOUSE BILL 915 ON THIRD READING**

Senator Moncrief moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 915** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 1415 ON SECOND READING

On motion of Senator Armbrister 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 1415, Relating to the duty of law enforcement agencies regarding records associated with certain defendants receiving deferred adjudication.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 1415** by striking all below the enacting clause and substituting the following:

SECTION 1. Section 411.081, Government Code, is amended by adding Subsections (d), (e), and (f) to read as follows:

(d) Notwithstanding any other provision of this subchapter, if a person is placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, subsequently receives a discharge and dismissal under Section 5(c), Article 42.12, and satisfies the requirements of Subsection (e), a criminal justice agency may not disclose to the public criminal history record information related to the offense giving rise to the deferred adjudication on or after:

(1) the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a misdemeanor other than a misdemeanor described by Subdivision (2);

(2) the fifth anniversary of the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a misdemeanor under Chapter 20, 21, 22, 25, 42, or 46, Penal Code; or

(3) the 10th anniversary of the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a felony.

(e) A person is entitled to the benefit provided under Subsection (d) only if during the applicable period described by Subsection (d)(1), (2), or (3), as appropriate, the person is not convicted of or placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, for any offense other than an offense under the Transportation Code punishable by fine only. A person is not entitled to the benefit provided under Subsection (d) during any period in which the person is required to register as a sex offender under Chapter 62, Code of Criminal Procedure.

(f) For purposes of Subsection (d), a person is considered to have been placed on deferred adjudication community supervision if, regardless of the statutory authorization:

(1) the person entered a plea of guilty or nolo contendere;

(2) the person was placed under the supervision of the court or an officer under the supervision of the court; and

(3) at the end of the period of supervision the judge dismissed the proceedings and discharged the person.

SECTION 2. Subchapter C, Chapter 552, Government Code, is amended by adding Section 552.139 to read as follows:

Sec. 552.139. EXCEPTION: RECORDS OF CERTAIN DEFERRED ADJUDICATIONS. (a) Subject to the dates provided by Subsection (b) and the requirements of Subsection (c), information is excepted from the requirements of Section 552.021 if the information relates to an arrest and the prosecution of an offense for which a person is placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, and subsequently receives a discharge and dismissal under Section 5(c), Article 42.12.

(b) The exception provided by Subsection (a) for information related to an arrest and the prosecution of an offense for which a person is placed on deferred adjudication is available only on or after:

(1) the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a misdemeanor other than a misdemeanor described by Subdivision (2);

(2) the fifth anniversary of the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a misdemeanor under Chapter 20, 21, 22, 25, 42, or 46, Penal Code; or

(3) the 10th anniversary of the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a felony.

(c) A person is entitled to the benefit provided under Subsection (a) only if during the applicable period described by Subsection (b)(1), (2), or (3), as appropriate, the person is not convicted of or placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, for any offense other than an offense under the Transportation Code punishable by fine only. A person is not entitled to the benefit provided under Subsection (a) during any period in which the person is required to register as a sex offender under Chapter 62, Code of Criminal Procedure.

(d) For purposes of Subsections (a) and (b), a person is considered to have been placed on deferred adjudication community supervision if, regardless of the statutory authorization:

(1) the person entered a plea of guilty or nolo contendere;

(2) the person was placed under the supervision of the court or an officer under the supervision of the court; and

(3) at the end of the period of supervision the judge dismissed the proceedings and discharged the person.

(e) A person who is the subject of information that is excepted from the requirements of Section 552.021 under this section may deny the occurrence of the arrest and prosecution to which the information relates and the exception of the information under this section, unless the information is being used against the person in a subsequent criminal proceeding.

SECTION 3. The change in law made by this Act applies to information related to a deferred adjudication or similar procedure described by Section 411.081(f), Government Code, as added by this Act, regardless of whether the deferred adjudication or procedure is entered before, on, or after the effective date of this Act.

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

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

On motion of Senator Armbrister and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

HB 1415 as amended was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Ogden asked to be recorded as voting "Nay" on the passage of **HB 1415** to third reading.

HOUSE JOINT RESOLUTION 81 ON SECOND READING

On motion of Senator Brown 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 81, Proposing a constitutional amendment providing for the issuance of additional general obligation bonds by the Texas Water Development Board.

The resolution was read second time.

Senator Brown offered the following committee amendment to the resolution:

Committee Amendment No. 1

Amend **HJR 81** as follows:

(1) In SECTION 1 of the resolution, in Subsection (a) of added Section 49-d-9, Article III, Texas Constitution (Engrossed version page 1, line 8), strike "at its determination".

(2) In SECTION 1 of the resolution, in Subsection (a) of added Section 49-d-9, Article III, Texas Constitution (Engrossed version page 1, line 9), between "II" and "," insert "and the water infrastructure fund".

(3) In SECTION 1 of the resolution, in Subsection (a) of added Section 49-d-9, Article III, Texas Constitution (Engrossed version page 1, line 10), after the period add "The board shall allocate the first \$50 million in proceeds from any bonds issued under this subsection to the water infrastructure fund.".

The committee amendment was read.

On motion of Senator Brown and by unanimous consent, Committee Amendment No. 1 was tabled.

Senator Brown offered the following amendment to the resolution:

Floor Amendment No. 1

Amend **HJR 81** as follows:

In SECTION 1 of the resolution, strike Subsection (a) of added Section 49-d-9, Article III, Texas Constitution, (Senate Committee Printed Version, page 1) and substitute the following: "(a) The Texas Water Development Board may issue additional general obligation bonds, at its determination, for one or more accounts of the Texas Water Development Fund II, in an amount not to exceed \$2 billion. Of the additional general obligation bonds authorized to be issued, \$50 million of those bonds shall be used for the water infrastructure fund as provided by law."

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

On motion of Senator Brown and by unanimous consent, the caption was amended to conform to the body of the resolution as amended.

HJR 81 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2853 ON SECOND READING

On motion of Senator Cain 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 2853, Relating to studies performed by, and information gathered and analyzed by, the legislative council.

The bill was read second time.

Senator Cain offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2853** by striking Section 1 of the bill and renumbering the remaining sections accordingly.

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

On motion of Senator Cain and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

HB 2853 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2853 ON THIRD READING

Senator Cain moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2853** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0, Present-not voting 1. (Same as previous roll call)

HOUSE BILL 2809 ON SECOND READING

On motion of Senator Cain 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 2809, Relating to statutory revision and statutory construction.

The bill was read second time.

Senator Cain offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2809** by striking Sections 1, 3, 4, and 5 of the bill and renumbering the remaining sections accordingly.

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

On motion of Senator Cain and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

HB 2809 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2809 ON THIRD READING

Senator Cain moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2809** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0, Present-not voting 1. (Same as previous roll call)

HOUSE BILL 2814 ON SECOND READING

On motion of Senator West 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 2814, Relating to the operation of statutory probate courts.

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

HOUSE BILL 2814 ON THIRD READING

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2814** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 2432 ON SECOND READING

On motion of Senator Armbrister 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 2432, Relating to the ratification of the creation of and to the administration, powers, duties, operation, and financing of the Lost Pines Groundwater Conservation District.

The bill was read second time.

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2432** (Senate Committee printing) as follows:

(1) In SECTION 4(b)(1) of the bill (page 1, line 39) strike "36.108" and substitute "36.1073,".

(2) In SECTION 4 of the bill (page 1, lines 28-56) add a new Subsection (d) and reletter the subsequent Subsections as follows:

(d) Combined regulatory pumping fees for production and export of water may not exceed 17 cents per thousand gallons for water used.

(3) Add a new SECTION ____ titled EXEMPTIONS and renumber the subsequent Sections accordingly.

SECTION _____. EXEMPTIONS. The district may not require a permit for the drilling of a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the well is located on the same lease or field associated with the drilling rig.

(4) In SECTION 6(g) of the bill (page 2, line 32) insert "two" between "serve" and "consecutive" and the words "after the confirmation election" before the period at the end of the sentence.

(5) In SECTION 7(c) of the bill (page 2, lines 56-58) delete "and" and substitute "and 36.019" between "36.018," and "Water Code."

(6) In SECTION 7 of the bill (page 2, lines 43-62) strike Subsection (d) and substitute the following:

(d) If the majority of qualified voters in a county who vote in the election vote to confirm the creation of the district, that county is included in the district. If the majority of qualified voters in a county who vote in the election vote not to confirm the creation of the district, that county is excluded from the district.

(7) In SECTION 7 of the bill (page 2, lines 43-62) add a new Subsection (e) as follows:

(e) The district is dissolved and this article expires on August 31, 2003, unless the voters confirm the creation of the district before that date.

(8) In SECTION 9 of the bill (page 2, lines 66-69 and page 3, lines 1-20) strike the entire section.

(9) Add a new SECTION _____. and renumber the subsequent Sections accordingly.

SECTION _____. MEMBERSHIP ON THE CENTRAL CARRIZO-WILCOX COORDINATING COUNCIL. The district is a member of the Central Carrizo-Wilcox Coordinating Council.

(10) Add a new SECTION _____. and renumber the subsequent Sections accordingly.

SECTION _____. MANAGEMENT PLAN. The district shall develop or contract to develop its own management plan under Section 36.1071, Water Code, and submit it to the Central Carrizo-Wilcox Coordinating Council to be included in the management plan developed by the Central Carrizo-Wilcox Coordinating Council.

(11) In SECTION 11(b) of the bill (page 3, lines 44-46) strike "2005" and insert "2003."

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

On motion of Senator Armbrister and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

HB 2432 as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE SENATE BILL 1831 ON SECOND READING

On motion of Senator Gallegos 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 1831, Relating to the designation of a portion of certain roads as the Texas Independence Highway, the Juan N. Seguin Boulevard, and the Juan N. Seguin Memorial Interchange.

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

**COMMITTEE SUBSTITUTE
SENATE BILL 1831 ON THIRD READING**

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1831** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

Absent-excused: Van de Putte.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0, Present-not voting 1. (Same as previous roll call)

SENATOR ANNOUNCED PRESENT

Senator Van de Putte, who had previously been recorded as "Absent-excused," was announced "Present."

(Senator Bivins in Chair)

**COMMITTEE SUBSTITUTE
HOUSE BILL 2690 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 2690, Relating to enforcement measures available to groundwater conservation districts.

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

**COMMITTEE SUBSTITUTE
HOUSE BILL 2690 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 **CSHB 2690** 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 1183 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 1183, Relating to reimbursement for expenses of collecting a short-term motor vehicle rental tax.

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

SENATE BILL 1183 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 1183** 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.

(President in Chair)

MOTION TO PLACE**HOUSE BILL 893 ON SECOND READING**

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

HB 893, Relating to an additional fee to support trauma centers to be collected when a motor vehicle is registered.

The motion was lost by the following vote: Yeas 13, Nays 13, Present-not voting 1. (Not receiving two-thirds vote of Members present)

Yeas: Barrientos, Brown, Ellis, Harris, Lindsay, Lucio, Madla, Moncrief, Truan, Van de Putte, Wentworth, Whitmire, Zaffirini.

Nays: Armbrister, Bernsen, Bivins, Cain, Fraser, Gallegos, Haywood, Jackson, Nelson, Ogden, Shapleigh, Staples, West.

Present-not voting: Mr. President.

Absent: Carona, Duncan, Shapiro, Sibley.

SENATE RULE 11.13 SUSPENDED**(Consideration of Bills in Committee)**

On motion of Senator Bivins and by unanimous consent, Senate Rule 11.13 was suspended to grant the conference committee on **HB 3343** permission to meet while the Senate was in session today.

**COMMITTEE SUBSTITUTE
HOUSE BILL 236 ON SECOND READING**

Senator Ellis moved to suspend the regular order of business to take up for consideration at this time:

CSHB 236, Relating to the applicability of the death penalty to a capital offense committed by a person with mental retardation.

The motion prevailed by the following vote: Yeas 20, Nays 9, Present-not voting 1.

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

Nays: Bernsen, Fraser, Haywood, Jackson, Nelson, Ogden, Shapiro, Sibley, Staples.

Present-not voting: Mr. President.

Absent: Carona.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 236** in SECTION 1 of the bill, in added Article 46B.05(a), Code of Criminal Procedure (page 1, lines 43-45, Senate Committee Printing), by striking "as if a jury in the case had returned an affirmative finding on the issue of mitigation under Article 37.071" and substituting "as if the defendant had been convicted in a case in which the state did not seek the death penalty".

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

On motion of Senator Ellis and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

CSHB 236 as amended was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Bernsen, Fraser, Haywood, Jackson, Nelson, Ogden, Shapiro, Sibley, and Staples asked to be recorded as voting "Nay" on the passage of **CSHB 236** to third reading.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 15, 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 TAKEN THE FOLLOWING OTHER ACTION:

HB 1641

Vote reconsidered by which the house concurred in Senate amendments. House refused to concur in Senate amendments and requests appointment of a conference committee.

House Conferees: Rangel - Chair/Brown, Fred/Farabee/Jones, Jesse/Morrison

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

**COMMITTEE SUBSTITUTE
HOUSE BILL 2 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:

CSHB 2, Relating to the regulation of certain political contributions, political expenditures, and political advertising; providing civil and criminal penalties.

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

RECORD OF VOTE

Senator Haywood asked to be recorded as voting "Nay" on the passage of **CSHB 2** to third reading.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2 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 **CSHB 2** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1, 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, Staples, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Haywood.

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 2**.

HOUSE BILL 139 ON SECOND READING

On motion of Senator Cain 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 139, Relating to the possession, use, and delivery of certain controlled substances and volatile chemicals; providing penalties.

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

HOUSE BILL 139 ON THIRD READING

Senator Cain moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 139** 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.

COMMITTEE SUBSTITUTE HOUSE BILL 2677 ON SECOND READING

On motion of Senator Whitmire 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 2677, Relating to the right of certain municipalities to maintain local control over wages, hours, and other terms of employment of certain municipal employees.

The bill was read second time.

Senator Gallegos offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 2677** (Senate Committee Printing) as follows:

(1) In SECTION 1 of the bill, at the end of proposed Section 143.403(a), Local Government Code (page 1, line 53), add the following:

This subchapter does not authorize an agreement regarding pension or pension-related matters governed by Chapter 358, Acts of the 48th Legislature, Regular Session, 1943 (Article 6243g, Vernon's Texas Civil Statutes), or a successor statute.

(2) In SECTION 1 of the bill, in proposed Section 143.407(a), Local Government Code (page 2, line 68), between "conditions of employment" and "to the" insert ", other than pension and pension-related matters,".

(3) In SECTION 1 of the bill, in proposed Section 143.407(b), Local Government Code (page 3, line 5), between "municipality" and the period insert

" , other than a statute, order, ordinance, or rule regarding pension or pension-related matters".

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

On motion of Senator Whitmire and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

CSHB 2677 as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2677 ON THIRD READING**

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2677** 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 BILL 2543 ON SECOND READING

On motion of Senator Duncan 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 2543, Relating to the establishment of a pilot program to provide child-care intervention services for certain children with severe behavioral problems.

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

HOUSE BILL 2543 ON THIRD READING

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2543** 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.

**COMMITTEE SUBSTITUTE
SENATE BILL 444 ON SECOND READING**

On motion of Senator Fraser 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 444, Relating to a study of fraud in the unemployment insurance system.

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

**COMMITTEE SUBSTITUTE
SENATE BILL 444 ON THIRD READING**

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 444** 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)

STATEMENT OF LEGISLATIVE INTENT

Senator Fraser submitted the following statement of legislative intent for **CSSB 444**:

The State Auditor will coordinate with the United States Department of Labor to ensure that the report's methodology complies with federal law and regulations governing the unemployment insurance program and that the underlying study be done in a cost efficient manner.

FRASER

SENATE BILL 941 WITH HOUSE AMENDMENT

Senator Lindsay called **SB 941** 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 941** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the eligibility of former or retired statutory probate judges for certain assignments as visiting judges.

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

SECTION 1. Section 25.0022, Government Code, is amended by adding Subsection (y) to read as follows:

(y) In addition to the eligibility requirements under Subsection (x), to be eligible for assignment under this section in the judge's county of residence, a former or retired judge of a statutory probate court must certify to the presiding judge a willingness not to:

(1) appear and plead as an attorney in any court in the judge's county of residence for a period of two years; and

(2) accept appointment as a guardian ad litem, guardian of the estate of an incapacitated person, or guardian of the person of an incapacitated person in any court in the judge's county of residence for a period of two years.

SECTION 2. (a) The change in law made by this Act applies only to the assignment of a former or retired statutory probate judge as a visiting judge on or after the effective date of this Act.

(b) This Act takes effect September 1, 2001.

The amendment was read.

On motion of Senator Lindsay, the Senate concurred in the House amendment to **SB 941** by a viva voce vote.

HOUSE BILL 3451 ON SECOND READING

On motion of Senator Lucio 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 3451, Relating to the continuation and functions of the Texas State Affordable Housing Corporation.

The bill was read second time.

Senator Bivins offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 3451** (Senate Committee Printing) by adding the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS accordingly:

SECTION _____. Subchapter B, Chapter 1372, Government Code, is amended by adding Section 1372.0221 to read as follows:

Sec. 1372.0221. DEDICATION OF PORTION OF STATE CEILING FOR TEACHERS HOME LOAN PROGRAM. Out of that portion of the state ceiling that is available exclusively for reservations by issuers of qualified mortgage bonds under Section 1372.022, \$25 million shall be allotted each year and made available exclusively to the Texas State Affordable Housing Corporation for the purpose of issuing qualified mortgage bonds in connection with the teachers home loan program established under Section 2306.562.

SECTION _____. Sections 2306.553(a) and (b), Government Code, are amended to read as follows:

(a) The public purpose of the corporation is to perform activities and services that the corporation's board of directors determines will promote the public health, safety, and welfare through the provision of adequate, safe, and sanitary housing primarily for individuals and families of low, very low, and extremely low income, and for teachers under the teachers home loan program as provided by Section 2306.562. The activities and services shall include engaging in mortgage banking activities and lending transactions and acquiring, holding, selling, or leasing real or personal property.

(b) The corporation's primary public purpose is to facilitate the provision of housing and the making of affordable loans to individuals and families of low, very low, and extremely low income, and to teachers under the teachers home loan program. The corporation may make first lien, single family purchase money mortgage loans for single family homes only to individuals and families of low, very low, and extremely low income if the individual's or family's household income is not more than the greater of 60 percent of the median income for the state, as defined by the United States Department of Housing and Urban Development, or 60 percent of the area median family income, adjusted for family size, as defined by that department. The corporation may make loans for multifamily developments if:

(1) at least 40 percent of the units in a multifamily development are affordable to individuals and families with incomes at or below 60 percent of the median family income, adjusted for family size; or

(2) at least 20 percent of the units in a multifamily development are affordable to individuals and families with incomes at or below 50 percent of the median family income, adjusted for family size.

SECTION _____. Subchapter Y, Chapter 2306, Government Code, is amended by adding Section 2306.562 to read as follows:

Sec. 2306.562. TEACHERS HOME LOAN PROGRAM. (a) In this section:

(1) "Home" means a dwelling in this state in which a teacher intends to reside as the teacher's principal residence.

(2) "Mortgage lender" has the meaning assigned by Section 2306.004.

(3) "Program" means the teachers home loan program.

(4) "Teacher" means a person who is a classroom teacher as defined by Section 5.001, Education Code.

(b) The corporation shall establish a program to provide eligible teachers whose income does not exceed 115% of area median family income, adjusted for family size, with low-interest home mortgage loans.

(c) To be eligible for a loan under this section, a teacher must:

(1) have been residing in this state for the five-year period preceding the date the teacher files an application for a loan under this section;

(2) have been working as a teacher for the three-year period preceding the application date; and

(3) reside in this state on the application date.

(d) The corporation may contract with other agencies of the state or with private entities to determine whether applicants qualify as teachers under this section or otherwise to administer all or part of this section.

(e) The board of directors of the corporation may set and collect from each applicant any fees the board considers reasonable and necessary to cover the expenses of administering the program.

(f) The board of directors of the corporation shall adopt rules governing:

(1) the administration of the program;

(2) the making of loans under the program;

(3) the criteria for approving mortgage lenders;

(4) the use of insurance on the loans and the homes financed under the program, as considered appropriate by the board to provide additional security for the loans;

(5) the verification of occupancy of the home by the teacher as the teacher's principal residence; and

(6) the terms of any contract made with any mortgage lender for processing, originating, servicing, or administering the loans.

(g) The corporation shall ensure that a loan under this section is structured in a way that complies with any requirements associated with the source of the funds used for the loan.

(h) In addition to funds set aside for the program under Section 1372.0221, the corporation may solicit and accept funding for the program from the following sources:

(1) gifts and grants for the purposes of this section;

(2) available money in the housing trust fund established under Section 2306.201, to the extent available to the corporation;

(3) federal block grants that may be used for the purposes of this section, to the extent available to the corporation;

(4) other state or federal programs that provide money that may be used for the purposes of this section; and

(5) amounts received by the corporation in repayment of loans made under this section.

(i) This section expires September 1, 2012.

SECTION _____. The Texas State Affordable Housing Corporation shall:

(1) give priority to a teacher who resides or teaches in an area of the state with a teacher shortage, as determined by the commissioner of education;

(2) aggressively pursue funding for the teachers home loan program required by Section 2306.562, Government Code, as added by this Act; and

(3) implement the teachers home loan program required by that section not later than September 1, 2002.

SECTION _____. (a) If the legislature finds in a scheduled review of the Texas State Affordable Housing Corporation by the Sunset Advisory Commission under Section 2306.5521, Government Code, that the teachers home loan program under Section 2306.562, Government Code, as added by this Act, is not being managed to accomplish the goal of providing low-interest home mortgage loans to teachers, the legislature shall make specific recommendations to remedy any problems.

(b) If the legislature finds in a scheduled review of the Texas State Affordable Housing Corporation by the Sunset Advisory Commission under Section 2306.5521, Government Code, that the corporation should be abolished, the teachers home loan program under Section 2306.562, Government Code, as added by this Act, shall be transferred to another appropriate state agency.

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

On motion of Senator Lucio and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

HB 3451 as amended was passed to third reading by a viva voce vote.

SENATE BILL 126 WITH HOUSE AMENDMENT

Senator Madla called **SB 126** 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 126** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the creation of the Rural Communities Health Care Investment Program to attract and retain rural health care professionals.

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

SECTION 1. Section 106.025(a), Health and Safety Code, is amended to read as follows:

(a) The center shall:

(1) educate the public and recommend appropriate public policies regarding the continued viability of rural health care delivery in this state;

(2) monitor and work with state and federal agencies to assess the impact of proposed rules on rural areas;

(3) provide impact statements of proposed rules as considered appropriate by the center;

(4) streamline regulations to assist in the development of service diversification of health care facilities;

(5) target state and federal programs to rural areas;

(6) promote and develop community involvement and community support in maintaining, rebuilding, or diversifying local health services;

(7) promote and develop diverse and innovative health care service models in rural areas;

(8) encourage the use of advanced communications technology to:

(A) ensure that rural areas receive the maximum benefits of telemedicine and distance learning by promoting a transmission rate structure that accommodates rural needs and by improving the telecommunications infrastructure in rural areas; and

(B) provide access to specialty expertise, clinical consultation, and continuing education;

(9) assist rural health care providers, communities, and individuals in applying for public and private grants and programs;

(10) encourage the development of regional emergency transportation networks;

(11) work with state agencies, universities, and private interest groups to conduct and promote research on rural health issues, maintain and collect a timely data base, and develop and maintain a rural health resource library;

(12) solicit the assistance of other offices or programs of rural health in this state that are university-based to carry out the duties of this chapter;

(13) disseminate information and provide technical assistance to communities, health care providers, and individual consumers of health care services;

(14) develop plans to implement a fee-for-service health care professional recruitment service and a medical supplies group purchasing program within the center;

(15) develop and initiate, in conjunction with the Texas State Board of Medical Examiners, the Board of Nurse Examiners, the Texas Department of Health, the Bureau of State Health Data and Policy Analysis, the Texas State Board of Physician Assistant Examiners, or other appropriate agencies, a study of rural health clinics to:

- (A) determine the efficiency and effectiveness of rural health clinics;
 - (B) review the health outcomes of rural patients treated in rural health clinics and report those outcomes in the center's biennial report to the legislature;
 - (C) identify and address efficiency barriers for the professional clinical relationship of physicians, nurses, and physician assistants;
 - (D) assess the success of attracting primary care physicians and allied health professionals to rural areas; and
 - (E) assess the appropriateness of the current clinic designation process;
- (16) develop and initiate a quality assessment program to evaluate the health outcomes of rural patients treated in rural health clinics; ~~and~~
- (17) encourage the active participation by physicians and other health care providers in the early and periodic screening, diagnosis, and treatment program; ~~and~~
- (18) seek state and federal money available for economic development in rural areas for programs under this chapter.

SECTION 2. Chapter 106, Health and Safety Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. RURAL COMMUNITIES
HEALTH CARE INVESTMENT PROGRAM

Sec. 106.301. DEFINITIONS. In this subchapter:

(1) "Health professional" means a person other than a physician who holds a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to practice in a health care profession.

(2) "Medically underserved community" means a community that:

(A) is located in a county with a population of 50,000 or less;

(B) has been designated under state or federal law as:

(i) a health professional shortage area; or

(ii) a medically underserved area; or

(C) has been designated as a medically underserved community by the center.

Sec. 106.302. ADVISORY PANEL. The center shall appoint an advisory panel to assist in the center's duties under this subchapter. The advisory panel must consist of at least:

(1) one representative from the Texas Higher Education Coordinating Board;

(2) one representative from the institutions of higher education having degree programs for the health professions participating in the programs under this subchapter;

(3) one representative from a hospital in a medically underserved community;

(4) one physician practicing in a medically underserved community;

(5) one health professional, other than a physician, practicing in a medically underserved community; and

(6) one public representative who resides in a medically underserved community.

Sec. 106.303. LOAN REIMBURSEMENT PROGRAM. The executive committee shall establish a program in the center to assist communities in recruiting health professionals to practice in medically underserved communities by providing loan reimbursement for health professionals who serve in those communities.

Sec. 106.304. STIPEND PROGRAM. (a) The executive committee shall establish a program in the center to assist communities in recruiting health professionals to practice in medically underserved communities by providing a stipend to health professionals who agree to serve in those communities.

(b) A stipend awarded under this section shall be paid in periodic installments.

(c) A health professional who participates in the program established under this section must establish an office and residency in the medically underserved area before receiving any portion of the stipend.

Sec. 106.305. CONTRACT REQUIRED. (a) A health professional may receive assistance under this subchapter only if the health professional signs a contract agreeing to provide health care services in a medically underserved community.

(b) A student in a degree program preparing to become a health professional may contract with the center for the loan reimbursement program under Section 106.303 before obtaining the license required to become a health professional.

(c) The center may contract with a health professional for part-time services under the stipend program established under Section 106.304.

(d) A health professional who participates in any loan reimbursement program is not eligible for a stipend under Section 106.304.

(e) A contract under this section must provide that a health professional who does not provide the required services to the community or provides those services for less than the required time is personally liable to the state for:

(1) the total amount of assistance the health professional received from the center and the medically underserved community;

(2) interest on the amount under Subdivision (1) at a rate set by the executive committee;

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

(4) a penalty as established by the executive committee by rule to help ensure compliance with the contract.

(f) Amounts recovered under Subsection (e) shall be deposited in the permanent endowment fund for the rural communities health care investment program under Section 106.308.

Sec. 106.306. POWERS AND DUTIES OF CENTER. (a) The executive committee shall adopt rules necessary for the administration of this subchapter, including guidelines for:

(1) developing contracts under which loan reimbursement or stipend recipients provide services to qualifying communities;

(2) identifying the duties of the state, state agency, loan reimbursement or stipend recipient, and medically underserved community under the loan reimbursement or stipend contract;

(3) determining a rate of interest to be charged under Section 106.305(e)(2);

(4) ensuring that a loan reimbursement or stipend recipient provides access to health services to participants in government-funded health benefits programs in qualifying communities;

(5) encouraging the use of telecommunications or telemedicine, as appropriate;

(6) prioritizing the provision of loan reimbursements and stipends to health professionals who are not eligible for any other state loan forgiveness, loan repayment, or stipend program;

(7) prioritizing the provision of loan reimbursements and stipends to health professionals who are graduates of health professional degree programs in this state;

(8) encouraging a medically underserved community served by a loan reimbursement or stipend recipient to contribute to the cost of the loan reimbursement or stipend when making a contribution is feasible; and

(9) requiring a medically underserved community served by a loan reimbursement or stipend recipient to assist the center in contracting with the loan reimbursement or stipend recipient who will serve that community.

(b) The executive committee by rule may designate areas of the state as medically underserved communities.

(c) The executive committee shall make reasonable efforts to contract with health professionals from a variety of different health professions.

Sec. 106.307. USE OF TELECOMMUNICATION AND TELEMEDICINE. A health professional who participates in a program under this subchapter may not use telecommunication technology, including telemedicine, as the sole or primary method of providing services and may not use telecommunication technology as a substitute for providing health care services in person. A health professional who participates in a program under this subchapter may use telecommunication technology only to supplement or enhance the health care services provided by the health professional.

Sec. 106.308. PERMANENT ENDOWMENT FUND. (a) The permanent endowment fund for the rural communities health care investment program is a special fund in the treasury outside the general revenue fund.

(b) The fund is composed of:

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

(2) gifts and grants contributed to the fund;

(3) the returns received from investment of money in the fund; and

(4) amounts recovered under Section 106.305(e).

Sec. 106.309. ADMINISTRATION AND USE OF FUND. (a) The center may administer the permanent endowment fund for the rural communities health care investment program. If the center elects not to administer the fund, the comptroller shall administer the fund.

(b) The administrator of the fund shall invest the fund in a manner intended to preserve the purchasing power of the fund's assets and the fund's annual distributions. The administrator may acquire, exchange, sell, supervise, manage, or retain, through procedures and subject to restrictions the administrator considers appropriate, any kind of investment of the fund's assets that prudent investors, exercising reasonable care, skill, and caution, would acquire or retain in light of the purposes, terms, distribution requirements, and other circumstances of the fund then prevailing, taking into consideration the investment of all the assets of the fund rather than a single investment.

(c) The comptroller or the center may solicit and accept gifts and grants to the fund.

(d) Annual distributions for the fund shall be determined by the investment and distribution policy adopted by the administrator of the fund for the fund's assets.

(e) Except as provided by Subsection (f), money in the fund may not be used for any purpose.

(f) The amount available for distribution from the fund, including any gift or grant, may be appropriated only for providing stipends and loan reimbursement under the programs authorized by this subchapter and to pay the expenses of managing the fund. The expenditure of a gift or grant is subject to any limitation or requirement placed on the gift or grant by the donor or granting entity.

(g) Sections 403.095 and 404.071, Government Code, do not apply to the fund. Section 404.094(d), Government Code, applies to the fund.

Sec. 106.310. REPORTING REQUIREMENT. The center shall provide a report on the permanent endowment fund for the rural communities health care investment program to the Legislative Budget Board not later than November 1 of each year. The report must include the total amount of money the center received from the fund, the purpose for which the money was used, and any additional information that may be requested by the Legislative Budget Board.

SECTION 3. Subchapter C, Chapter 61, Education Code, is amended by adding Section 61.0899 to read as follows:

Sec. 61.0899. ASSISTANCE IN CERTAIN RURAL HEALTH CARE LOAN REIMBURSEMENT AND STIPEND PROGRAMS. The board shall, in cooperation with the Center for Rural Health Initiatives and the center's advisory panel established under Section 106.302, Health and Safety Code, ensure that the board seeks to obtain the maximum amount of funds from any source, including federal funds, to support programs to provide student loan reimbursement or stipends for graduates of degree programs in this state who practice or agree to practice in a medically underserved community.

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 Madla moved to concur in the House amendment to **SB 126**.

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

Present-not voting: Mr. President.

GUESTS PRESENTED

Senator Shapleigh was recognized and introduced to the Senate Dr. Juan Hernandez, advisor to President Vicente Fox on Mexicans abroad, and Vicente Sanchez Ventura, Consul General of Mexico in Austin.

The Senate welcomed its guests.

GUEST PRESENTED

Senator Truan was recognized and introduced to the Senate former Senator John Montford, Chancellor of the Texas Tech University System.

The Senate welcomed Chancellor Montford.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolution

SR 1055 by Barrientos, In memory of Curtis Dale Tunnell of Austin.

Congratulatory Resolutions

SR 1051 by Ellis, Congratulating Jessica Elyse Bodner.

SR 1052 by Cain, Congratulating Stacy Lynn Boggs.

SR 1053 by Cain, Commending the Honey Grove Nursing Center.

SR 1056 by Barrientos, Congratulating The Big Time band of Austin.

SR 1057 by Barrientos, Congratulating Doris Rangel Velasquez of Austin.

ADJOURNMENT

On motion of Senator Truan, the Senate at 2:48 p.m. adjourned, in memory of John V. McMillan of Tarrant County, until 9:00 a.m. tomorrow.

APPENDIX

SIGNED BY GOVERNOR

May 11, 2001

SB 54, SB 68, SB 98, SB 184, SB 201, SB 276, SB 277, SB 301, SB 335, SB 405, SB 462, SB 519, SB 648, SB 665, SB 718, SB 777, SB 788, SB 884, SB 945, SB 966, SB 969, SB 1147, SB 1166, SB 1287, SB 1468, SCR 29

SENT TO GOVERNOR

May 15, 2001

SB 24, SB 38, SB 79, SB 141, SB 187, SB 188, SB 203, SB 243, SB 297, SB 324, SB 387, SB 424, SB 532, SB 539, SB 553, SB 561, SB 569, SB 645, SB 650, SB 664, SB 694, SB 834, SB 916, SB 968, SB 1045, SB 1158, SB 1189, SB 1194, SB 1236, SB 1272, SB 1352, SB 1386, SB 1421, SB 1429, SB 1497, SB 1600, SB 1672, SB 1737

In Memory
of
John V. McMillan

Senator Moncrief offered the following resolution:

(Senate Concurrent Resolution 60)

WHEREAS, The Legislature of the State of Texas joins the citizens of Tarrant County in mourning the loss of John V. McMillan, who died Tuesday, May 1, 2001, at the age of 87; and

WHEREAS, Born in Omen, Texas, John McMillan studied accounting at Southwestern Business College in Houston; while a student, he worked with the A&P Grocery chain and later was promoted to a position of store manager in Port Arthur; he became a route salesman for Coca-Cola Bottling Company in Houston and went on to become superintendent of the company's sub-operations located in El Campo, Brenham, Huntsville, Bay City, and Eagle Lake; and

WHEREAS, From 1944 until 1952, Mr. McMillan owned restaurants and convenience stores; in 1952, he sold his business interests to accept the appointment as president and co-owner of Jax Distributing Company of Dallas; after beer sales doubled, he was awarded the Tarrant County territory in 1960; and

WHEREAS, An ingenious businessman with a wide range of experience, John McMillan assumed the Coors Distributorship for Tarrant County in 1966, and in 1974, he purchased his partner's stock in the distributorship and became the sole owner of the business; and

WHEREAS, Mr. McMillan was dedicated to his work as chairman of the board of Coors Distributing Company of Tarrant County and was past president of the Wholesale Beer Distributors of Texas and the North Fort Worth Business Association; and

WHEREAS, An exemplary gentleman who distinguished himself in his career, John McMillan was respected for his many accomplishments and his leadership in the community; he had served on the Fort Worth Chamber of Commerce Executive Committee and was past chairman of the chamber's Convention and Visitors Bureau; he was a member of the Tarrant County Convention Center Board of Directors and the Lions Club; and

WHEREAS, A man of integrity, strength, and generosity, he gave unselfishly of his time to others, and his wisdom, warmth, and valued counsel will not be forgotten by those who knew him; and

WHEREAS, John McMillan was devoted to his late wife, Katie C. McMillan, and to his children and grandchildren, and he leaves behind memories that will be treasured forever by his family and many friends; now, therefore, be it

RESOLVED, That the 77th Legislature of the State of Texas hereby extend sincere condolences to the bereaved family of John V. McMillan: his daughter, Jeri McMillan; his grandsons, Larry, Randy, Tim, and Danny Anfin; and his nine great-grandchildren; and, be it further

RESOLVED, That a copy of this resolution be prepared for the members of his family as an expression of deepest sympathy from the Texas Legislature, and that when the Legislature adjourns this day, it do so in memory of John McMillan.

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 Moncrief and by unanimous consent, the resolution was considered immediately and was adopted by a rising vote of the Senate.

Senator Moncrief was recognized and introduced to the Senate family members of John V. McMillan: his daughter, Jeri McMillan, and his grandsons, Tim Anfin, Randy Anfin, and Danny Anfin.

The Senate welcomed its guests and extended its sympathy.